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**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1284/5/7/18  
1290/5/7/18

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Monday 9 May 2022

Before:  
The Honourable Mr Justice Michael Green  
Derek Ridyard  
Sir Iain McMillan CBE FRSE DL  
(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

Royal Mail Group Limited  
BT Group PLC and Others v DAF Trucks Limited and Others **Claimants**

v

DAF Trucks Limited and Others **Defendants**

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**A P P E A R A N C E S**

Tim Ward QC, Ben Lask and Clíodhna Kelleher (On behalf of RM/BT)  
Daniel Beard QC, James Bourke and Daisy Mackersie (On behalf of DAF)

Monday, 9 May 2022

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(10.30 am)

THE CHAIRMAN: Good morning.

MR BEARD: Good morning.

THE CHAIRMAN: Before we start, I have a couple of timetabling issues, if we may. On Thursday of this week, we need to finish at 3 o'clock for various reasons. I think that will be during Mr Ashworth's evidence.

It seems like we have quite a lot of time set aside for Mr Ashworth's evidence but in order to make up, we can sit early and possibly have a curtailed lunch break, but we just need to finish by 3 o'clock on that day.

I hope that is okay with the parties.

MR BEARD: Of course.

THE CHAIRMAN: The other thing is, in relation to the concurrent evidence scheduled for the week of 23 May, we are in the process of preparing some areas that we would like the experts to deal with or the sort of areas of our questioning. We hope to distribute that by next Monday, 16 May.

MR BEARD: Great, thank you. We are most grateful. That is very helpful, thank you very much.

A couple of timing issues from our side.

THE CHAIRMAN: Yes.

1 MR BEARD: So today we will hear evidence from Mr Giles, who  
2 is already sitting in the box, but Mr Ward will  
3 introduce him in due course. Later this afternoon,  
4 Mr Barnes. We will deal with Mr Barnes briefly. I do  
5 not know how long we will be with Mr Giles.

6 The plan then is to deal with the remaining  
7 witnesses for Royal Mail and BT tomorrow morning. We  
8 have indicated to Mr Ward that we do not, in the light  
9 of the testimony given last week, have any questions for  
10 Ms Bradshaw, so she will not be needed to be attending  
11 and cross-examined.

12 THE CHAIRMAN: So just Mr Cahill and Mr Goldring?

13 MR BEARD: Yes, that is it. I anticipate we will go very  
14 short tomorrow, unfortunately. I have made enquiries  
15 about whether Mr Habets could start early, but that is  
16 not going to be possible because he is coming over from  
17 Eindhoven during the course of tomorrow and at short  
18 notice it has not been possible to rearrange matters.  
19 I think tomorrow will be brief and then we will start  
20 again on Wednesday morning. I have given that  
21 indication already to Mr Ward but I thought I would  
22 alert the tribunal to it.

23 THE CHAIRMAN: Well, as long as we keep up with the  
24 timetable --

25 MR BEARD: I do not anticipate that it creates any

1           difficulties. Mr Ward did not indicate as such.

2           THE CHAIRMAN: Yes.

3           MR BEARD: Obviously I am not holding him to these things  
4           because I do not know how my witnesses will answer to  
5           Mr Ward's questioning and so on.

6           THE CHAIRMAN: All right. Thank you.

7           Mr Ward, so you are calling Mr Giles?

8           MR WARD: Yes.

9           THE CHAIRMAN: Can Mr Giles be sworn in.

10                           MR SIMON DAVID GILES (affirmed)

11           THE CHAIRMAN: Thank you, Mr Giles. Please sit down.

12                           Examination-in-chief by MR WARD

13           MR WARD: Mr Giles, you have given two witness statements in  
14           these proceedings. Are there any changes you would like  
15           to make to those statements?

16           A. No, there are no changes.

17           Q. Are the contents true to the best of your knowledge and  
18           belief?

19           A. Correct.

20           MR WARD: Please wait. There will be some questions first  
21           from Mr Beard.

22                           Cross-examination by MR BEARD

23           MR BEARD: Good morning, Mr Giles. So just a little bit of  
24           background in relation to your role, you began working  
25           at Royal Mail in 1990; that is correct?

1 A. That is correct.

2 Q. When did you actually join the fleet team within  
3 Royal Mail? Do you remember?

4 A. Can I refer to my --

5 Q. Of course, please, sorry. It is your first witness  
6 statement. 1.3 is where you talk about these matters.  
7 You just do not indicate when you actually joined the  
8 fleet team so I was just curious. You say when you left  
9 it. That is all.

10 A. On 1.3 {D/4/1}, before joining the procurement team in  
11 2001, the role that I had done in the procurement team  
12 has been within the fleet procurement team.

13 Q. So you joined the fleet team in 2001, did you?

14 A. Correct.

15 Q. I see. The fleet team, I imagine, as per its name, is  
16 just responsible for the management of Royal Mail's  
17 fleet of vehicles; is that correct?

18 A. That is correct.

19 Q. It used to be known as vehicle services, I think you  
20 have said that in your witness statement?

21 A. That is correct.

22 Q. You have worked in project management and finance rules  
23 within the fleet team and you have been involved in  
24 buying trucks for Royal Mail when you have been in the  
25 fleet team; is that correct?

- 1 A. Correct, yes.
- 2 Q. So you joined the procurement part of the fleet team in  
3 2001; is that right?
- 4 A. 2001, as a buyer.
- 5 Q. So as a buyer, your role was to be purchasing vehicles  
6 for Royal Mail, including trucks?
- 7 A. I was involved within -- as a buyer within the  
8 procurement team, but that procurement team would be  
9 involved on the purchase of the trucks.
- 10 Q. Do you recall how many people worked in the procurement  
11 team when you joined it in 2001? You do not need to  
12 give a precise number.
- 13 A. I was trying to reflect back. From recollection, there  
14 was I think around six people. Six people.
- 15 Q. Thank you. So as part of that team, your role was  
16 contracting for the purchase of vehicles. So was there  
17 a job description for your buyer role within the --
- 18 A. The generic job description says buyer.
- 19 Q. In 2007, you took on a new role of procurement manager,  
20 vehicles; is that correct?
- 21 A. Correct.
- 22 Q. You are still in that role; is that correct?
- 23 A. Correct.
- 24 Q. What does that role involve?
- 25 A. That role involves the tendering and contracting for the

1 purchase of vehicles for Royal Mail.

2 Q. When you became procurement manager of vehicles, how  
3 many people were in your team in 2007; do you recall?

4 A. Not an exact number. It was five or six people but  
5 I cannot recall exactly how many.

6 Q. Is that about the same now?

7 A. Yes -- no, there is only two people in the procurement  
8 team now.

9 Q. Right. You have mentioned tendering. I wanted to look  
10 at one of the examples of tendering that has been  
11 referred to and look at the procurement process that you  
12 have referred to.

13 If we just turn up your first statement at  
14 paragraph 4.1, so this is just for the electronic -- it  
15 is already there, thank you very much {D/4/5}. You will  
16 recall this, you say that:

17 "If there was a live relevant contract with  
18 a supplier, Trucks could be purchased [under it] ..."

19 Or the procurement team could do a tender exercise.  
20 That is correct, is it not?

21 A. Correct.

22 Q. What I want to do is go through a new tender exercise  
23 and just ask you a few questions. So I am going to take  
24 an example, I am not going to take you through lots and  
25 lots of them.

1 A. Okay.

2 Q. But what I want to look at is the tender example  
3 2009/2010, which the Royal Mail ran for the supply of  
4 heavy vehicles.

5 Mr Giles has a clean notebook with him and he just  
6 asked if it was okay to take notes as we went through.

7 THE CHAIRMAN: That is fine.

8 MR BEARD: I indicated no objection at all.

9 THE CHAIRMAN: Right.

10 If you can just keep your voice up as well, it is  
11 going a bit quiet. Thank you.

12 MR BEARD: I will tell you this now and then we will see it  
13 in the documents, but I do not know if you recall this  
14 tender was covering vehicles ranging from 7.5 tonnes to  
15 around 44 tonnes, as well as trailers. But if you do  
16 not recall precisely then we will come back to it in the  
17 documents.

18 A. I do not recall precisely.

19 Q. So could we turn up {I6/226.3}, please? Are you trying  
20 to find it in your hard copy bundle? I do not know  
21 whether it will be -- will it be tab 8? Sorry, Mr Giles  
22 also has hard copies of certain documents. They are --

23 THE CHAIRMAN: That is a clean copy as well?

24 MR BEARD: Yes, it is.

25 THE CHAIRMAN: You would prefer to look at the hard copy



1           than on the screen?

2           A.   Yes.

3           THE CHAIRMAN:  I know the feeling.

4           MR BEARD:  That is why they are provided.  I will try to  
5           provide parallel references.

6           THE CHAIRMAN:  Yes, thank you.

7           MR BEARD:  You will see at the top it says "HVT Information  
8           Pack".  Sorry, it is a set of slides.  Do you have it in  
9           the hard copy?

10          A.  I will use the slides.  I cannot see it in the hard copy  
11          at this moment in time.

12          Q.  I do not mind pausing if you want to have a look  
13          through.  I am not trying to hustle you through the hard  
14          copy documents, we will do that later.

15                 Tab 6 perhaps, I am being told by...

16          THE CHAIRMAN:  Is that the exhibit to his witness statement,  
17          or what is it?

18          MR BEARD:  I cannot remember --

19          THE CHAIRMAN:  What file is he looking at?

20          MR BEARD:  It is a bespoke file that was prepared of  
21          documents we thought we might be going to, just to try  
22          and ironically speed the process.

23          A.  I will use the screen.

24          MR BEARD:  I am very grateful.  I am sorry, Mr Giles, we  
25          were trying to make sure you had hard copies as well.

1           "HVT Information Pack", you can see that in front of  
2           you?

3           A. Yes.

4           Q. With a big shiny DAF CF on the front of it? "HVT" just  
5           means heavy vehicles tender; that is correct, is it not?

6           A. That is correct.

7           Q. It is slide deck that we will see is from 2009 and sets  
8           out the plan for the heavy vehicles tender.

9           The name at the bottom, Robert Wheeler is named as  
10          the procurement manager. Could you just tell me what  
11          his role within Royal Mail was, please?

12          A. Robert Wheeler was part of the procurement team as at  
13          that time he was the procurement manager and led this  
14          tender activity.

15          Q. So was he essentially your predecessor in procurement  
16          manager vehicles?

17          A. For that particular role, yes, but Robert Wheeler is  
18          still employed within Royal Mail.

19          Q. That was my next question, thank you, Mr Giles. What  
20          does he do now? He is group procurement, is he?

21          A. He is -- he is the senior procurement manager.

22          Q. Right, thank you. If we go over the page to page 2  
23          {I6/226.3/2}, "Top Level Timescales", I am assuming  
24          "V3.0" means version 3.0, so presumably there might have  
25          been earlier versions. I do not know, is that how you

- 1           would code these sorts of documents?
- 2       A. I do not know because it is not my document. It is
- 3       Mr Wheeler's document.
- 4       Q. Right. You will see on that page a left-hand column
- 5       that is showing a set of activities. Then you will see
- 6       "trailers", "motorised", "lead", working across. Do you
- 7       see that?
- 8       A. Yes.
- 9       Q. The activities, not all of them relate to each of the
- 10      right-hand columns because we can see blank boxes, but
- 11      this sets out a detailed list of the sorts of activities
- 12      that need to be undertaken in relation to tendering; is
- 13      that broadly right?
- 14      A. Yes.
- 15      Q. When it says "trailers" and "motorised", is "motorised"
- 16      the vehicles part of this tender exercise?
- 17      A. Correct.
- 18      Q. Then on the next page, {I6/226.3/3}, I think we see
- 19      a project plan timeline which looks like it is mirroring
- 20      the sorts of activities we have seen on the preceding
- 21      page; is that right?
- 22      A. Correct.
- 23      Q. If we can go over the page to page 4 {I6/226.3/4}, we
- 24      see "Motorised -- Key Activities". Am I right in
- 25      understanding that this is the preparatory steps before

1           you go out to tender, setting out what the key  
2           activities in relation to the vehicle tendering process  
3           will be?

4           A. This gives the key steps from the commencement of the  
5           tender all the way through to the recommendation to  
6           award that Royal Mail will make to the sourcing council.  
7           So it gives the full tender process from commencement to  
8           end.

9           Q. When we see in the first box "Preparation March 2009",  
10          that is essentially the planning process before the  
11          tender project actually kicks off; is that a fair  
12          summary of what is being referred to there?

13          A. Yes, I believe so.

14          Q. Yes. Just in that box, we see "Understanding the needs  
15          and requirements of the business", I think probably  
16          self-explanatory; "Setting expectations and agreeing the  
17          approach with stakeholders". The stakeholders are the  
18          stakeholders within Royal Mail; that is correct, is it  
19          not?

20          A. The stakeholders will be part of the Royal Mail fleet  
21          team. Going back to the initial slide on the top level  
22          timescales, you have got the leads against each one of  
23          those.

24          Q. Right, thank you. Then "Commence the planning and set  
25          out activities and milestones". You will actually have

1 pre-tender vendor meetings, so that will be meetings  
2 with potential vendors of vehicles; is that correct?

3 A. That was one of the key activities that was noted down.  
4 I do not know whether the pre-tender vendor meetings  
5 happened or not.

6 Q. Understood, thank you.

7 Then we have got "Project Kick-Off", and I do not  
8 think that is a code name. That is just suggesting the  
9 start of the project, is it?

10 A. That is -- no, it is not a code name.

11 Q. Okay. We are very used to the idea of preposterous code  
12 names being put on various sorts of projects but  
13 I understand this to be the start of the tender process?

14 A. That is correct.

15 Q. Right, thank you.

16 So if we could just look at what we have got here.  
17 So you have got "Situation Target Proposal and Team  
18 Charter", so those are documents that are prepared as  
19 part of the strategy that the procurement team or the  
20 team involved in this project will be operating under;  
21 is that right?

22 A. They are documents that are prepared ahead of the  
23 sourcing paper, so they outline the key stakeholders on  
24 the team charter and Royal Mail's current situation  
25 target proposal within that for this particular tender.

1 Q. You refer to a sourcing paper, is that the next --

2 A. That is your next bullet point.

3 Q. Yes, the next bullet point is "Sourcing strategy paper"

4 which will go up to something called the sourcing

5 council. We will come back to some of these, but that

6 is what you are referring to?

7 A. Yes.

8 Q. Then:

9 "Finalise and agree the plan, activities and

10 milestones.

11 "Tender development.

12 "Develop specifications (including specification

13 challenge)."

14 So these are specifications for, in this case,

15 trucks that were being identified, correct?

16 A. Correct.

17 Q. Specification challenges: asking the business whether

18 they really do need particular aspects of a truck

19 specification?

20 A. Correct.

21 Q. Then "TCO modelling approach agreed". Could you just

22 tell me what "TCO" stands for there?

23 A. TCO is total cost of ownership.

24 Q. So this is looking at the global cost of trucks and how

25 you would model that global cost of trucks when it comes

- 1 to the assessment process; is that right?
- 2 A. It is looking at the cost to Royal Mail for the  
3 ownership of that truck.
- 4 Q. Throughout its life?
- 5 A. Throughout its life.
- 6 Q. Yes, so this is where things like residual values will  
7 come in, as we will see; is that correct?
- 8 A. Correct.
- 9 Q. Thank you. Then "Tender communications plan" I think we  
10 can leave. "Commence benchmarking activities." So  
11 "Commence benchmarking activities", that would be you  
12 actively looking at other customers out in the market,  
13 what intelligence you could get about other prices that  
14 people had bought at and so on, presumably?
- 15 A. I believe so, yes.
- 16 Q. So "Current Situation", so this will be  
17 for June/July 2009. This is all rolling forward from  
18 the beginning of 2009. You issue an OJEU notice. That  
19 is an official journal of the European Union notice, is  
20 it not?
- 21 A. Correct.
- 22 Q. That is because you fall, or at least at that time fell  
23 within the scope of the European Union public  
24 procurement rules?
- 25 A. Correct.

1 Q. Then you would pull together a vendor short list --

2 THE CHAIRMAN: Sorry, what was PQQ? Did you ask?

3 MR BEARD: I am so sorry. I will ask. I was going to come

4 back to it, but yes. PQQ, if you would not mind?

5 A. Pre-qualification questionnaire.

6 Q. Thank you. Then "Vendor short list" would be prepared.

7 You do not know whether or not in this case there were

8 actually pre-tender vendor meetings, I think you have

9 already indicated. But those would be part of a process

10 of identifying what a sensible short list might be,

11 because you might talk to someone and they say, "No, we

12 are just not interested in working with you on these

13 sorts of projects". Is that broadly what it would be?

14 A. The vendor short list is not necessarily linked to the

15 vendor meetings. It will be on the responses that we

16 have had through the OJEU notice and the PQQ.

17 Q. Right.

18 A. How we get to the short list, based on those responses.

19 Q. Right, understood. So you would issue the OJEU and the

20 PQQ, then you get a vendor short list and then you would

21 issue the ITT, and what is the ITT?

22 A. Invitation to tender.

23 Q. Thank you. Then after that, you would have a "Vendor

24 conference Benchmarking (continued)". I do not know

25 whether this should be two bullet points or one here



1           because "benchmarked" is capitalised, but can you just  
2           tell me what a vendor conference is?

3           A. If a vendor conference was held, a vendor conference  
4           would be to outline Royal Mail's expectations from that  
5           tender and for any potential attendee to ask any  
6           questions of Royal Mail.

7           Q. But the idea of a vendor conference would be all of the  
8           potential vendors would attend, is that the way it would  
9           work?

10          A. It would be to the companies that have been issued with  
11          an ITT.

12          Q. Sorry, understood. It is those that are issued with the  
13          ITT which will probably, in most circumstances, be that  
14          vendor short list?

15          A. Correct.

16          Q. Yes. Then the benchmarking is again comparison of  
17          prices and specification that you would be looking at  
18          between different vendors; is that right?

19          A. That is what a benchmarking would generally look at.  
20          Whether the benchmarking and the vendor conference  
21          happened, I do not know.

22          Q. Then you would, after that, start the "Preparation for  
23          assessment and evaluation" of tender returns?

24          A. Correct.

25          Q. Okay. So then the next stage would be the "Strategy

1 Implementation". So "Assessment and evaluation of  
2 responses", that is responses to the ITT that is being  
3 referred to there, correct?

4 A. Correct, yes.

5 Q. Then you would also have "Vehicle trials including  
6 driver involvement", so that is Royal Mail drivers  
7 testing vendor models of various sorts potentially; is  
8 that what is being referred to here?

9 A. The vehicle trials is to look at the truck and to get an  
10 evaluation of that truck, which may include an  
11 assessment of the fuel consumption within that trial  
12 which will then go forward as part of that total cost of  
13 ownership modelling that Royal Mail will then use as  
14 part of that evaluation.

15 Q. Understood. But it would be Royal Mail drivers that  
16 would carry that out?

17 A. Correct.

18 Q. Yes. Then "Down selection", is that essentially  
19 narrowing the group of vendors that you are then dealing  
20 with? Is that what that refers to?

21 A. "Down selection" would be a reduction in the number of  
22 companies that we would want to take forward.

23 Q. When you take it forward, I think that is probably  
24 illustrated by the next bullet, that you would actually  
25 engage in further negotiations with the whittled down

1 group of vendors; is that --

2 A. Correct, yes. That is assuming that we have narrowed  
3 the vendor choice as well. It may be that we take all  
4 the suppliers through to the vendor negotiations, so...

5 Q. Understood, yes. Understood.

6 Then after you had gone through that process of  
7 vendor negotiations, which could be quite an extensive  
8 back and forth, then you would have the sourcing council  
9 paper; is that right?

10 A. That is correct. The full title is that is the  
11 recommendation to award paper that goes through to the  
12 sourcing council.

13 Q. Right. We will come back to one of those in relation to  
14 perhaps not this tender, but in due course.

15 Then "Notification of selection/award ..." would be  
16 the conclusion of the decision of the sourcing council  
17 and effectively Royal Mail's decision; is that right?

18 A. That is correct.

19 Q. Then after that, the last box is "Vendor Management",  
20 "Post selection and award ...", and then actions to  
21 mitigate any risks that have been identified during the  
22 process, correct?

23 A. Yes.

24 Q. So we are looking at the best part of a year,  
25 effectively. So preparations starting in March 2009,

1 running through to December 2009 as a sort of nine-month  
2 process for procurement and so on. That is what is  
3 being laid out here, correct?

4 A. That is what is being laid out there.

5 Q. That sort of sophistication is the way in which you  
6 develop your procurement strategies in relation to large  
7 contracts; is that broadly fair?

8 A. There are standard papers in here that are compulsory.  
9 Some of the papers are not and it may be that that key  
10 activities can be flexed up and down dependent on the  
11 product or the service that we are buying on behalf of  
12 Royal Mail.

13 Q. Completely understood. If you were buying some other  
14 smaller value product, then you might do a little bit  
15 less --

16 A. Correct.

17 Q. -- of these various steps. But when you are looking at  
18 potentially large and long-running contracts for  
19 vehicles, these are the steps that you would anticipate  
20 going through?

21 A. Again, generally, occasionally, depending on the market  
22 knowledge that the Royal Mail fleet team have of  
23 a particular product, it may not be necessary to engage  
24 on a PQQ, a pre-qualification questionnaire, because of  
25 the knowledge that has been built up in that time. So

1           they are not a compulsory document. You know, we do use  
2           those, but not in every instance.

3       Q. Understood, so we could drop the PQQ if there was enough  
4           internal knowledge within the Royal Mail procurement  
5           team. Presumably that Royal Mail procurement team, part  
6           of its job is to make sure it has quite a lot of  
7           knowledge of the way the market is working?

8       A. Correct, yes. The mandatory documents that were  
9           produced are the sourcing strategy and the  
10          recommendation to award and, at the time, obviously the  
11          OJEU notice that we had to do.

12      Q. Understood. Just so we tidy up slightly in relation to  
13          what the scope of this particular tender was, if you  
14          could just go to page 6 {I6/226.3/6}, so this is the  
15          heavy vehicles tender scope and it is talking about what  
16          you refer to as "Small Heavies", so this is 7.5-tonne  
17          carrying trucks, "Medium Heavies" which are 18-tonne  
18          carrying trucks, and we will just pick that up in  
19          passing. "CIT" is cash in transit?

20      A. Correct.

21      Q. Then "Large Heavies", and those are tractor units. So  
22          they are the ones that pull trailers, correct?

23      A. Correct.

24      Q. When it says "4x2" and "6x2", what it means is four  
25          wheels, two steering; is that correct?

1 A. That is correct. It is the axles.

2 THE CHAIRMAN: So cash in transit, that is referring to  
3 what? They will be carrying cash?

4 A. Cash in transit vehicles were operated by our post  
5 office, and they were armoured vehicles that we used to  
6 move the cash.

7 MR BEARD: They are not really the subject of what we are --

8 THE CHAIRMAN: No.

9 MR BEARD: But I just wanted to clarify yet another acronym  
10 that --

11 THE CHAIRMAN: The medium heavies has a "CIT chassis".

12 MR BEARD: Yes, so it is for large amounts of cash, I  
13 imagine.

14 So if we go over the page to "Motorised Vehicle  
15 Manufacturers", so these are the people that you are  
16 looking at at this time as potential suppliers. We will  
17 just run through.

18 DAF we are familiar with. What you are saying here  
19 is that DAF is currently the main provider of 7.5-tonne  
20 through to tractor requirements. So in 2009, you do not  
21 recall their position at that time?

22 A. I do not recall their exact position but I do not --  
23 I believe that this was true.

24 Q. Yes. So I just wanted to check, the beige box, in 2009,  
25 so far as you recall, that is what was actually being

1           supplied to you by manufacturers around that time, or  
2           you do not recall?

3       A. I do not recall exactly. If I read the text in this  
4           presentation, I think this is based on the fleet that  
5           Royal Mail has with each of the manufacturers that are  
6           listed in the grey box.

7       Q. Yes, that is how we read it too but I just wanted to  
8           check I was understanding correctly. Thank you.

9           Then what is being identified there are other  
10           manufacturers: Volvo, Scania, Renault, Mitsubishi, Hino.  
11           In relation to the last two, it says:

12                 "1 off Cantor being evaluated".

13                 Can you tell me what a "cantor" is?

14       A. It is a Mitsubishi Canter. It is equivalent to a DAF  
15           7.5-tonne vehicle.

16       Q. Thank you. So what is being said here is that  
17           a Mitsubishi vehicle and a Hino vehicle are being  
18           evaluated by fleet at the time of this tender  
19           exploration exercise?

20       A. Yes, that is what this presentation is telling me.

21       Q. That is what it is telling you as well as --

22       A. Yes.

23       Q. Understood, thank you.

24                 If we just go over the page {I6/226.3/8}, is this  
25           a part of what we see here, part of the sort of

1 benchmarking that you did, which was you looked at where  
2 different manufacturers supplied to other major truck  
3 users? Because we see there, for instance, in the first  
4 line, Mercedes: Tesco, Sainsbury, Fedex, Asda, Morrison,  
5 Boots.

6 It looks like someone has done some analysis of  
7 which of these major organisations use which trucks. Is  
8 that a fair assessment of what is going on here in  
9 relation to the tender documents?

10 A. I think that is a fair assessment.

11 Q. Thank you. If we just go over the page to page 9  
12 {I6/226.3/9}, I have skipped through a little bit in  
13 relation to trailers, but "Trailer Manufacturers". What  
14 we have got there is a list of the trailer manufacturers  
15 that would provide trailers to Royal Mail. Is that  
16 a list that is familiar to you?

17 A. It is not a list that is totally familiar but they are  
18 a list of trailer manufacturers and, from my knowledge,  
19 Cartwright were the predominant trailer manufacturer  
20 within the Royal Mail fleet, and I am aware that we  
21 have -- had ordered trailers with Don-Bur.

22 Q. So the comments on those first two fit with -- I am not  
23 going to say necessarily your knowledge, but your broad  
24 belief --

25 A. Yes.



1 Q. -- in relation to the position in 2009?

2 A. Yes.

3 Q. Just to be clear, when you are identifying this range of  
4 trailer manufacturers, you are identifying other people  
5 that at the moment are not supplying Royal Mail but  
6 could be potential suppliers of trailers as well?

7 A. Correct.

8 Q. Yes. Let us pick it up at 11, if we may {I6/226.3/11}.

9 I do not know if this is familiar to you. This is  
10 a description of fleet sizes within Royal Mail. Is this  
11 something that you are able to confirm, or do you know  
12 the details of this?

13 A. I would not know with accuracy, whether that -- on those  
14 exact fleet sizes at that particular time.

15 Q. But you have no reason to doubt what is being put --

16 A. No.

17 Q. It is the right feel and size for you in relation to  
18 this?

19 A. Yes.

20 Q. If we just go over the page then {I6/226.3/12}, this is  
21 "HVT Stakeholders". So the reference to "stakeholders"  
22 we saw earlier, I think probably comes back to this.

23 When you gave your answer earlier, you referred to  
24 the team leads that we had seen in the diagram. But  
25 I do not think you are suggesting that this list is not

1 representative of stakeholders that would be concerned  
2 in the procurement exercise, correct?

3 A. This is just a list of heavy -- of stakeholders that  
4 would have been engaged through the tender process.

5 Q. Right. We have encountered Robert Wheeler. I am not  
6 going to work through all of them, you will be pleased  
7 to know, but could you just tell me:

8 "Graham Jarvis (L1 - for CATMAN papers 1, 2 and 4ab)  
9 ..."

10 First of all, who is Graham Jarvis, and is "CATMAN"  
11 category management?

12 A. Correct, "CATMAN" is category management and  
13 Graham Jarvis worked in the procurement team as the  
14 level 1. Simon Arnott, as the level 2, would have been  
15 the senior procurement manager; Robert Wheeler, the  
16 procurement lead for procurement on this particular  
17 tender activity.

18 Q. So levels go upwards. So level 1 is the most junior,  
19 level 2 --

20 A. Level 1 is the most senior, level 2, level 3.

21 Q. Right. So Graham Jarvis is the most senior, then it is  
22 Simon Arnott, then Robert Wheeler; is that right?

23 A. Correct.

24 Q. Then sourcing council we will come back to. Legal  
25 services we will leave. Phil O'Gorman, general manager

1 Royal Mail assets; is that correct?

2 A. That is correct.

3 Q. Paul Gatti, head of commercial fleet services, because  
4 his name comes up a bit later. So what is his role, or  
5 what was his role at this time? This is 2009 we are  
6 talking about. Do you recall his role?

7 A. Not his exact role. I am aware that he, Paul Gatti, at  
8 that time worked within Royal Mail fleet, or previously  
9 vehicle services as the head of commercial fleet  
10 services. He reported into Phil O'Gorman during his  
11 time.

12 Q. Alan Ellingham, there are no details there. Do you  
13 recall what he did?

14 A. Alan Ellingham worked within the finance team of  
15 Royal Mail fleet.

16 Q. Finance team, thank you. I will just skip down a few  
17 names, if I may.

18 Mike Aspinall, "Vehicle Remarketing". Is this an  
19 individual who is involved in the resale of trucks --

20 A. Correct.

21 Q. -- at the end of the process, right, so he is being  
22 consulted for these purposes?

23 A. Correct.

24 Q. Then I will not go through the remainder. If we go over  
25 the page {I6/226.3/13}, we see the "Governance" here.

1           So there are quite a number of people involved in the  
2           governance and it is the governance of this tender  
3           project that would be being referred to here?

4           A.   Yes.

5           THE CHAIRMAN:  Your name does not appear on any of this.

6           MR BEARD:  That was one of my next questions.

7           THE CHAIRMAN:  Sorry.

8           MR BEARD:  No, it is an absolutely fine question because it  
9           is where I was going, yes.

10          THE CHAIRMAN:  Do you want to ask it?

11          MR BEARD:  No, no.  Please do ask.

12                        If you would not mind answering the chairman's --

13          A.   Yes, so if I can refer back to the previous slide of the  
14               stakeholders.

15          Q.   Yes, please, that is number 12.

16          A.   Robert Wheeler was at the time procurement for vehicles.  
17               Robert Wheeler has since moved to the senior procurement  
18               role, but my role within the team at that time would not  
19               have looked -- I did not cover this particular tender,  
20               it was led by Robert Wheeler, not myself.

21          Q.   Right.  So you were not involved in this tender, is that  
22               broadly --

23          A.   Not directly, no.

24          Q.   I see.  If we can just move over to page 14

25               {I6/226.3/14}, I think we have probably covered this but

1           this is a description of the sort of fuel trial exercise  
2           that I think you were referring to, that would be  
3           carried out as part of the procurement overall  
4           assessment. Is that correct?

5           A. To my knowledge, yes.

6           Q. Then if we go on to 15 {I6/226.3/15}, we have "Vendor  
7           Conference & Viewing Days". I will leave the "trailers"  
8           one, but second bullet point:

9                     "1 day event for Motorised (vendor conference only)  
10           on Tuesday 14th July at Coton House".

11           Then:

12                     "Vendor Conference format.

13                     "Morning to be a general briefing to all interested  
14           parties."

15           I think you have already indicated that would be all  
16           of the vendors that were still of interest to you --  
17           I am going to put it in neutral terms -- is that  
18           correct?

19           A. I think rather of interest to Royal Mail that were still  
20           bidding through the tender process that we wanted to  
21           invite to the vendor conference.

22           Q. So you would have a general briefing with them all in  
23           the morning and then in the afternoon you would actually  
24           have a sort of structured series of bilateral meetings  
25           with them. Is that how these vendor conferences worked?

- 1 A. It is what is written down in the presentation, so no  
2 reason to doubt what has been written ...
- 3 Q. But is this the standard way in which a vendor  
4 conference process would work? Is this the sort of  
5 organisation you would put in place for a vendor  
6 conference?
- 7 A. Again, it can be a vendor conference, it could just be  
8 a morning vendor conference which is just outlining  
9 Royal Mail. So I cannot say that there is a set format  
10 for every vendor conference that Royal Mail has, but  
11 this example is used in this tender.
- 12 Q. But in broad terms you would have a joint session with  
13 all of the vendors as well as bilateral meetings, would  
14 be the standard approach to vendor conferences; is  
15 that -- never mind the precise timing?
- 16 A. Yes.
- 17 Q. Yes, thank you. Now, I think I do not need to take you  
18 to any more of that slide. Well, perhaps we will just  
19 go to 20, if we may, {I6/226.3/20}. This is the  
20 terrible slide you get at the end of these meetings  
21 thinks, "Things to do", and everybody being allocated  
22 tasks, I assume.
- 23 The first is the "Situation Target Proposal" which  
24 we have already referred to, and then the "Team  
25 Charter". Then it is also referring to preparing those

1 various steps and organising matters for the vendor  
2 conference. That would be a standard approach that you  
3 would then allocate tasks once which project was started  
4 and underway?

5 A. Yes, this is... yes.

6 Q. Let us go to the team charter. You refer to this at  
7 paragraph 4.1 of your witness statement, but if I may,  
8 I am going to take you to the team charter for this  
9 tender, just to look at it. So {I2/149/1}, please.  
10 I think it would be in tab 4 of your hard copies if that  
11 is of assistance, and it should say "Team Charter" in  
12 the top left. Do you have it? You will have it in both  
13 places. Excellent, thank you.

14 So, dated April 2009, which I think broadly --  
15 I will not take you back to the slides, but broadly fits  
16 with the timeline that was being laid out. We see the  
17 section on the "Project Team" at the top and, again,  
18 I am not going to run through it but we see a number of  
19 the names that we saw on the previous slides being  
20 included. But the project manager is Rob Wheeler and  
21 the sponsor is Phil O'Gorman.

22 Again, you are not referred to in relation to this  
23 but I think you have explained this is because it was  
24 not your tender to look after?

25 A. Correct.

1 Q. But what we do see there is, as per the previous  
2 stakeholders list, a whole combination of expertise from  
3 Royal Mail being brought in to help manage this tender  
4 process amongst the team members; correct?

5 A. Correct, yes.

6 Q. So what we see there is, for instance, if you go down to  
7 "In Scope", we see broadly reflected there what we have  
8 already seen as the "In Scope" set out in those previous  
9 slides. I am just connecting the different documents  
10 that we had.

11 A. Yes, that seems to tie the two.

12 Q. Sorry, it is not a memory test on what you saw on the  
13 previous slides. I am just trying to track through how  
14 Royal Mail did things from the point of view of process  
15 and how it designed the tender process and the details  
16 it went into in dealing with these matters.

17 We have touched on already, in relation to documents  
18 and you refer to in your witness statement, sourcing  
19 strategy paper. I have mentioned the sourcing council.  
20 Could you just explain the role of the sourcing council?  
21 I think it was the final determinant for Royal Mail's  
22 decision; is that right?

23 A. That is correct. So once a recommendation to award  
24 paper for the final decision, that recommendation would  
25 be presented to the sourcing council to support the



1           award of that contract or contracts.

2           Q. Right. I am going to look at the sourcing strategy  
3           paper for the HVT tender that we have just been looking  
4           at. But, first, I want to go to just a slightly earlier  
5           document which also seems to have been prepared for the  
6           sourcing council. It is August 2008 and I have it in my  
7           bundle -- I think it will be tab 17 in your bundle, and  
8           for the electronic bundle, it is {I2/92.2/1}, please.  
9           It should say "Heavy Commercial Vehicles" and then it  
10          says "Simon Arnott"?

11          A. Yes.

12          Q. Is that the right document? You have found it in hard  
13          copy as well?

14          A. Yes.

15          Q. We have already heard who Simon Arnott is. He is  
16          Rob Wheeler's line superior, effectively?

17          A. At that time.

18          Q. At that time, I am so sorry, yes. But this is actually  
19          an August 2008 document, it says. If we go to slide 2  
20          {I2/92.2/2}, we will see at the top "Challenge" and  
21          these are essentially the objectives of the exercise in  
22          relation to heavy vehicles:

23                 "Mitigate cost exposure.

24                 "Secure supply."

25                 What is "CSR" at the bottom? Do you know?

1 A. Corporate social responsibility.

2 Q. Thank you. So this is an earlier document that appears  
3 to have gone up from Simon Arnott before that tender  
4 slide document because it is dated August 2008, so it is  
5 a sort of pre-discussion. Is that the sort of document  
6 that would have been prepared for the sourcing council?

7 A. The paper for the sourcing council is generally a Word  
8 document, so I am not sure why this document is in  
9 a presentation-style format.

10 Q. Right. Let us go to slide 4 {I2/92.2/4}. I wonder  
11 whether it might be in part because what was being  
12 anticipated was that heavy commercial vehicle demand is  
13 booming, as you see here, so therefore there was  
14 a concern about how tendering might work and the  
15 sourcing council is being alerted to this early. Could  
16 that be the position? You do not --

17 A. I do not know.

18 Q. Understood. So you have not seen this document before?

19 A. No.

20 THE CHAIRMAN: Is this related to the 2009 tendering?

21 MR BEARD: Yes, we believe it is. But there is only so far  
22 I can go with a witness who has not seen it, of course.

23 THE CHAIRMAN: No.

24 MR BEARD: Let me see if there is anything... I am going to  
25 go to slide 8, not because you will have seen it before,

1 but if we could just call up slide 8 {I2/92.2/8}, only  
2 because this is a very neat picture of all the different  
3 trucks that are at issue here, I think.

4 So if we look in the top left-hand side, we have got  
5 the rigid 7.5-tonne trucks, and that is a two-axle  
6 version. So that would be a 4x2; is that correct?

7 A. The general description, yes. So on the tractor on the  
8 far right, that is a 4x2 tractor unit.

9 Q. Yes, and then you will see next in from that, you have  
10 a "Tri Axle and above", and if one looks carefully  
11 I think you can see that looks like a three-axle for  
12 a six-wheel rigid?

13 A. Correct.

14 Q. Then we have "Tractors" illustrated on the right-hand  
15 side. Then we have got "Trailers" obviously illustrated  
16 down in the left-hand corner, and then "Bodies" very  
17 neatly illustrated in the bottom right.

18 It says here:

19 "Truck manufacturers (like DAF) normally supply  
20 a 'chassis cab'. The body which is then required is  
21 added after via a body builder."

22 That is the position in relation to bodies  
23 generally?

24 A. At that period of time, I understand that to be correct.

25 Q. Yes, thank you. Can I turn on to 16 {I2/92.2/16}? You

1 have obviously not seen this slide so I am not going to  
2 ask you about that, but what you will see in the  
3 heading:

4 "7.5 [tonne], Rigids & Tractors - Market Overview."

5 So this appears to be some kind of market  
6 intelligence that Royal Mail has gathered together.

7 You will see in the box it says:

8 "[Royal Mail] represents 1.5% of the total UK HCV  
9 market ..."

10 Do you recall that sort of share being what you  
11 understood at the time to be Royal Mail's --

12 A. I do not know.

13 Q. You do not know. Understood.

14 Right. I think I will not ask you any further  
15 questions about that document, I think it will not be  
16 fair.

17 Let us actually go to the sourcing strategy paper  
18 that I mentioned earlier. I am not sure you have this  
19 in your hard copy bundle; I do not think you do.  
20 I think you have only got drafts in there and I want to  
21 take you to the final version rather than drafts. So  
22 I am just going to show it to you electronically.

23 So it is {I2/300}. So this is a Royal Mail sourcing  
24 council number 33 document, and I think, as you rightly  
25 anticipated, it is a Word document rather than

1 a PowerPoint presentation.

2 The sourcing council, as I think you were previously  
3 indicating, is dealing with sourcing of all sorts of  
4 procurement -- sourcing of all sorts of products. We  
5 are only interested today in trucks, effectively. So  
6 I am not going to take you through all of the details of  
7 this.

8 I do just want to pick up one issue, which is at  
9 page 12, if I may {I2/300/12}. Do you know who Martin  
10 Perminas is or was?

11 A. He was --

12 Q. Sorry, at this relevant time. Sorry, that was not  
13 a good question.

14 A. He did work within Royal Mail procurement. I cannot  
15 recall what his exact role was within the procurement.

16 Q. It says "Royal Mail Group -- Sourcing Councils TOR".  
17 Do you know what that "TOR" might mean here?

18 A. It might mean terms of reference.

19 Q. Okay, that makes sense. So it is a 2009 review. Do you  
20 remember seeing this or being aware of this --

21 A. Not to my knowledge, no.

22 Q. Okay. So can we just go on two pages to page 14  
23 {I2/300/14}. You had not heard about the background and  
24 purpose of this review in 2009?

25 A. [Shakes head]

1 Q. Understood, thank you.

2 If we could then just go on to page 37 {I2/300/37},  
3 so this is sourcing council number 33, April 2009, so it  
4 is again fitting with the timeline, broadly speaking.  
5 Again, I am not testing you on recollection of that  
6 timeline we saw in the slides, but I am going to make  
7 that assertion. The paper title is "Heavy Vehicle  
8 Tender", the author again is Rob Wheeler, the  
9 procurement manager. This is "Sourcing Strategy". So  
10 this looks like, to you, a standard sourcing strategy  
11 paper?

12 A. The format I am familiar with, yes.

13 Q. There we have got the business sponsor who at this point  
14 is now Mike Devanny?

15 A. Correct. Mike Devanny took over from Phil O'Gorman.

16 Q. Thank you. The project lead is Rob Wheeler. It says  
17 "Business Case/Budget Approval Status" for 09/10 and  
18 10/11, so it is particularly focused on those two years,  
19 correct? Is that what we are getting from that?

20 A. Yes.

21 Q. We have "Team Names" and we have understood why you  
22 would not be named in that team. But if we could just  
23 go over the page, {I"/300/38} I think this is a standard  
24 construction of these documents. First of all you see  
25 the "Proposal". Do you see that at the top?

- 1 A. Yes.
- 2 Q. So in this case it is a proposal for a contract duration  
3 up to five years through the negotiated process?
- 4 A. Correct.
- 5 Q. Those sort of long-term contracts is what you looked  
6 for, broadly speaking, in relation to trucks?
- 7 A. It says it is a contract duration up to five years.  
8 That contract could be let as a one-year contract and  
9 subsequently extended, or it could be let as a full  
10 five-year contract.
- 11 Q. Understood.
- 12 We will come back to some of the pricing issues in  
13 relation to the length of contracts and so on in  
14 a moment. But you see the "Proposal", and then you see  
15 "Background and Current Situation" which is broadly  
16 giving an indication of what heavy vehicles are used by  
17 which bits of the business again?
- 18 A. Correct.
- 19 Q. That makes sense. Then if we go to section 3, just  
20 further down the page, again I am assuming this is part  
21 of the standard approach at this point. You have got  
22 "Business Requirements & Strategic Considerations" is  
23 then set out for the sourcing council, correct?
- 24 A. Correct.
- 25 Q. So we see the "Total Cost of Ownership" as the

1 explanation of "TCO" there and the desire for that to be  
2 optimised, which I think you have already indicated is  
3 the goal that Royal Mail had in this sort of procurement  
4 exercise, correct?

5 A. Correct.

6 Q. Then the "Security of supply" consideration which,  
7 again, we have seen previously and is part of  
8 Royal Mail's goal in relation to these sort of  
9 procurement exercises, correct?

10 A. Yes.

11 Q. Yes. It says there:

12 "... in a challenging market where manufacturers are  
13 reducing capacity and targeting higher margin sales,  
14 there is a need to secure supply."

15 Now, this is a document from April 2009. This is an  
16 indication of concerns about security of supply that  
17 Royal Mail are expressing, presumably in the face of the  
18 global financial crisis?

19 A. I cannot say why it was put in there, if it was due to  
20 the global financial crisis, because the paper does not  
21 reference the global financial crisis. It would have  
22 been part of the information gathering that formulate  
23 that part of the sourcing strategy through the tasks  
24 that are undertaken.

25 Q. Do you recall that, in fact, Royal Mail was actually



1           concerned that there was a risk of manufacturers going  
2           out of business at this time?

3           A. Not that I can recall.

4           Q. You cannot recall. We just talked about the duration of  
5           the contract, but just whilst we are in this document,  
6           under that table, it says:

7                     "Despite an increasingly challenging and volatile  
8           marketplace, [Royal Mail] still enjoys having fixed  
9           price contracts covering all heavy vehicles until  
10          31st December 2009. These contracts and pricing levels  
11          were set in 2004 (7.5t and trailers) and 2007 (tractors  
12          and rigids). All contracts have been aligned to expire  
13          in Dec 2009, in readiness for this tender process."

14          So presumably you did know that up until this point,  
15          actually there had been long-term fixed price contracts,  
16          particularly in relation to 7.5-tonne trucks; you are  
17          aware of that?

18          A. I am aware of the contracts. The contracts may have  
19          been let for a year and then subsequently extended the  
20          following year, so it is -- or there could be  
21          a long-term contract. Without actually seeing each  
22          individual contract and understanding the initial term  
23          and then the subsequent extensions that went along that,  
24          it is difficult to comment.

25          Q. But you are not doubting the analysis here that says the

1 pricing levels were set in 2004 were fixed price  
2 contracts?

3 A. Without seeing the contracts, I cannot say for definite  
4 whether the pricing set in 2004 was still applied in  
5 2009.

6 Q. Fair enough.

7 A. If the specification of the truck that we bought over  
8 that period was the same.

9 Q. I understand the qualification as well. What we will do  
10 is we will come back to some of the contracts in those  
11 circumstances --

12 A. Okay.

13 Q. -- given your answer.

14 Could we just go over to section 4 on page 39,  
15 please? {I2/300/39} So 4.1, there is a reference to the  
16 numbers that I took you to in relation to that 2008  
17 document about Royal Mail's market share, but you say  
18 you do not recall that. As you see, it is referring to  
19 based on UK figures, suggesting that it might actually  
20 be greater given the relatively stable demand profile.  
21 That would not surprise you. You have a relatively  
22 stable demand profile but the market during the global  
23 financial crisis was all over the place.

24 A. The demand for Royal Mail for trucks would be set out in  
25 the vehicle replacement plan each year.

1 Q. Understood. So are you saying by that, that it would  
2 not be stable or that -- I am not sure I understand the  
3 answer. Here, it is saying: "We have a relatively  
4 stable demand profile". I understand that each year you  
5 will give an estimate of how many trucks you are  
6 actually going to need, but here it is being said that  
7 that demand profile is relatively stable.

8 A. It does not say whether that is looking forward or back,  
9 and whilst we may forecast and give estimates around  
10 what our demand may be, it will be the vehicle  
11 replacement plan that will outline how many trucks we  
12 will purchase in a particular year.

13 Q. Right. We will maybe come back to some of that, the  
14 volumes, in a bit.

15 You then see there is a diagram with lots of truck  
16 manufacturers identified, but I think you have fairly  
17 said that you have not seen this material previously and  
18 therefore you are not able to comment on this. Is that  
19 fair?

20 A. I think that is quite fair, yes.

21 Q. If we just go down to the bottom of the page, just to  
22 the heading there, "Market Conditions", and then over  
23 the page {I2/300/40}, if you can just read that first  
24 paragraph -- actually, read the first three paragraphs,  
25 if you may. (Pause)

1 I think you have said that you have not seen this  
2 document and this material. Earlier I asked you about  
3 the possibility of Royal Mail having a concern about  
4 exiting. You can see where I was getting that from.  
5 I am not going to ask you to confirm it, but these  
6 concerns about costs and long-term exchange rate  
7 problems, those were the factors you took into account  
8 when you were thinking about how to carry out the tender  
9 process; is that fair?

10 A. It is a fair assessment to say that this was considered  
11 as part of this particular sourcing activity. It also  
12 may be fair to say that, if companies are going out of  
13 business, we may look to do the correct due diligence if  
14 we are placing longer-term contracts that that company  
15 we are contracting with has that will still be a going  
16 concern during that contract period.

17 Q. I completely understand. If I could just pick up the  
18 question I specifically asked about costs volatility and  
19 costs changes and long-term exchange rate risk, those  
20 would also be factors you would be taking into account  
21 in considering your tendering exercise, correct?

22 A. Yes. The factors that may influence the pricing when we  
23 send the tenders back -- sorry, when we receive the  
24 tenders back in.

25 Q. Thank you. If we go down to 5, again, I imagine that

1           this is just standard form -- in fact, I more than  
2           imagine, having seen a couple of these documents -- that  
3           considering "Sourcing Levers and Benefits Potential",  
4           that is people like Rob Wheeler setting out how, in the  
5           negotiation process, Royal Mail is going to be able to  
6           exert pressure and use its leverage in relation to  
7           negotiations, correct?

8           A. It is how we can secure a deal that is beneficial for  
9           both parties and ensure that we get the contract in  
10          place with the right company at the right terms.

11          Q. Yes, and you are here identifying the sorts of issues  
12          that will be leverage in relation to that process,  
13          correct?

14          A. Yes, this outlines some of the thoughts that go into the  
15          sourcing strategy that we could potentially have  
16          discussions with any future company.

17          Q. But that is why the term "levers" is used here, is it  
18          not? It is your point of purchase, essentially?

19          A. It is areas for discussion, so, yes, could we leverage  
20          it in the sourcing strategy?

21          Q. Let us just look at one of them, "Volume consolidation":

22                 "The market will be leveraged through the  
23                 consolidation of 7.5t vehicles, rigid vehicles and  
24                 tractor volumes in to a single motorised tender, and the  
25                 possible opportunity to combine trailer and box body

1 requirements ... will be explored."

2 What is being said here is we can essentially put  
3 pressure on price downwards if we consolidate volumes  
4 when we ask for people to respond to tenders. That is  
5 what is being said here, is it not?

6 A. It is looking at the option rather than doing individual  
7 tenders for a 7.5-tonne, a rigid vehicle and a tractor  
8 unit, and doing three separate tenders to one particular  
9 tender, to consolidate the supply that we have got, to  
10 understand what offers we could get through the total  
11 requirement that Royal Mail has for heavy goods  
12 vehicles.

13 Q. Understood. You seem quite resistant to recognise the  
14 term "leveraged" is used in there?

15 A. No, not at all.

16 Q. So you are happy that you are able to leverage your  
17 volume considerations as is being set out here?

18 A. We will always look at what volume we have got and  
19 ensure that that is attractive to the market.

20 Q. What is being said here is that, by consolidating  
21 volume, you will make it more attractive to the market  
22 to offer you lower prices?

23 A. If the market wants that particular volume and  
24 understands that that is a market interpretation of how  
25 they want to respond to our tender.

1 Q. I see. But what is being anticipated here is that the  
2 market will react in that way because it is saying the  
3 market will be leveraged?

4 A. Yes, it does say the market will be leveraged.

5 Q. That makes perfect sense, because discount for volume is  
6 not a shocking concept within any sort of procurement  
7 business, is it, Mr Giles?

8 A. That would be a hope, yes.

9 Q. Then if we could just move on, "Specifications":

10 "Standardisation may offer leverage opportunities in  
11 addition to reducing capital costs, and may bring  
12 previously non-compliant or unattractive  
13 players/products into consideration."

14 So there, what is being talked about are two ways in  
15 which you can leverage. One is actually by just making  
16 the specifications of trucks simpler, which I think we  
17 touched on earlier, will mean that you can potentially  
18 drive prices down, correct?

19 A. So by changing the specification, Royal Mail may make  
20 specification changes to more of a standard product. So  
21 it may bring the price down to Royal Mail because the  
22 specification is reduced.

23 Q. So the specification is reduced and that is what  
24 reducing capital costs is referring to here, is it not?

25 A. If the specification is reduced and that is accepted by

1 the business, that reduces capital cost, yes.

2 Q. Yes, but the second strand is that, actually, if you  
3 remove some rather particular bells and whistles from  
4 your specification, actually you can bring in more  
5 potential tenderers; that is also what is being said  
6 here, is it not?

7 A. That is what -- yes.

8 Q. Yes, and you do not disagree with that as a concept for  
9 procurement at all?

10 A. No. Competition.

11 Q. "Benchmarking is to be undertaken with similar fleets  
12 and rental providers to educate a specification review  
13 activity."

14 So this is going back to what we were looking at,  
15 I think, earlier when I showed you those slides about  
16 Tesco and Asda and various people. You would actively  
17 go out and look at the specifications of their trucks.  
18 So the benchmarking exercise is not just about pricing,  
19 it is actually about specification and how you can  
20 modify your specification in order to benefit from the  
21 levers we have been talking about. Is that what is  
22 being talked about here?

23 A. I do not know at that time whether Royal Mail went out  
24 and looked at the specifications of the trucks referred  
25 to as Tescos, et cetera. I do know Royal Mail do look



1 at the specifications of trucks but we will always buy  
2 a truck to the specification that Royal Mail needs to be  
3 able to operate within the Royal Mail fleet.

4 Q. Of course. You are not going to want a cement mixer to  
5 deliver post, I am guessing, so I can see that you are  
6 going to want to ensure that you have got the correct  
7 specification for the relevant activity. But what is  
8 being said here is:

9 "Benchmarking is to be undertaken with similar  
10 fleets and rental providers to educate a specification  
11 review activity."

12 So it is talking about actively going out and  
13 carrying out precisely that sort of benchmarking, is it  
14 not?

15 A. This document, yes.

16 Q. Then the third point is "New market entrants":

17 "A number of lower-cost new market entrants (eg Hino  
18 and Mitsubishi) could provide cost benefit, and  
19 a specification review could allow the use of these  
20 alternative products to be operated within the fleet --  
21 China to be a consideration."

22 So I think here it is actually going back to the  
23 point about specification leverage. If you change your  
24 specification so that others may be able to tender, you  
25 change the dynamics of the tendering exercise; is that

1           how you understand this?

2           A. If Royal Mail changed the specification of tender, we  
3           could have more interest from other manufacturers as  
4           part of that tender process, correct.

5           Q. Then "Supplier preferencing":

6                     "The [Royal Mail] fleet is one of the largest in the  
7           UK and there will be natural appeal to work with  
8           a strong brand and stable business during this difficult  
9           time within the industry."

10                    So we are in 2009, we are in the midst of the global  
11           financial crisis and what is being said here is you can  
12           leverage the Royal Mail brand, particularly in trucks,  
13           because those trucks will be seen out and about on the  
14           streets in Britain. Is that what you are talking about  
15           here?

16           A. That is what the paper refers to, yes.

17           THE CHAIRMAN: Can I just go back to the "Specifications"  
18           paragraph?

19           MR BEARD: Of course, sir.

20           THE CHAIRMAN: That last sentence where it says:

21                     "Benchmarking is to be undertaken with similar  
22           fleets and rental providers ..."

23                     What is that a reference to, do you know?

24           A. So it is looking at the Royal Mail specification and how  
25           that Royal Mail specification compares to other fleets

1           within the market as well as rental companies that rent,  
2           as an example, a 7.5 or 18-tonne vehicle within the  
3           market.

4       THE CHAIRMAN: I see. So that is the companies that lend  
5           companies like Royal Mail?

6       A. Correct, yes.

7       THE CHAIRMAN: Or lease to Royal Mail.

8       A. Generally rent. So we will hire rental trucks as part  
9           of our day-to-day business and the document refers to  
10          reviewing the specification of a rental truck against  
11          a specification of a Royal Mail truck.

12      THE CHAIRMAN: Okay. Thank you.

13      MR BEARD: Now might be a convenient time for a short break  
14          perhaps.

15      THE CHAIRMAN: I assume you do not have similar documents  
16          that Mr Giles was actually involved with?

17      MR BEARD: Not that we have identified. We have tried to  
18          make sure as we go through that we are picking up the  
19          documents that he is mentioning; we are not just playing  
20          a game of putting to him documents he has not seen. But  
21          this is a strand of documentation that we thought he may  
22          well have seen because it is 2009/2010, which was after  
23          he was appointed to his role, and therefore we were  
24          somewhat hopeful we might be able to use this.

25      THE CHAIRMAN: I understand. All right, we will have

1 a ten-minute break.

2 (11.42 am)

3 (A short break)

4 (11.55 am)

5 THE CHAIRMAN: Yes, Mr Beard.

6 MR BEARD: Thank you, sir.

7 I will come back and amplify the answer I gave to  
8 the question just before the break in a bit, but I am  
9 going to carry on with the documentary chain that we are  
10 dealing with, if that is okay.

11 THE CHAIRMAN: Okay.

12 MR BEARD: In your witness statement at 5.3 -- this is your  
13 first witness statement, Mr Giles -- you refer to  
14 requests for information {D/4/7}. Do you recall that?

15 A. Yes.

16 Q. So requests for information, as the title suggests, are  
17 essentially tools for getting information from the  
18 manufacturers in this context; is that broadly correct?

19 A. Yes, correct.

20 Q. Could we just go to {I2/130}, please? So this is  
21 a "Heavy Commercial Vehicles Request For Information ...  
22 Process Map" and we understand that this is an RFI from  
23 around the time of the tender process that we were just  
24 talking about. So around 2009?

25 A. Okay.

1 Q. So this was not a document that you saw at the time?

2 A. Provided the exact same copy of the RFI that you have in  
3 your document within my first witness statement pack.

4 Q. Yes, you did, Mr Giles, absolutely. That was not the  
5 question I asked.

6 A. No.

7 Q. Did you see this document at the time in 2009?

8 A. At the time it was produced, I do not recall whether  
9 I saw it or did not see it.

10 Q. Okay. So let us just have a look at it, shall we? Then  
11 it might come back to you. It is headed "Request For  
12 Information (RFI) Process Map", "Plan and engage by  
13 TBD". Is that "to be determined"?

14 A. Yes.

15 Q. "Discuss and agree vendor list ...  
16 "Engage vendors and get [non-disclosure agreements]  
17 signed ..."

18 A. Correct.

19 Q. "Develop briefing document for vendors ..."  
20 Then it talks about "RFI sessions..." and it is  
21 about establishing market interest in the HCV, so this  
22 is heavy commercial vehicles, project?

23 A. Correct.

24 Q. "Establish what a 'best in class' approach looks like  
25 ...

1           "Establish what is seen as market standard  
2           specifications for LCVs"?

3       A. Light commercial vehicles.

4       Q. "Get some high level cost benchmarks.

5           "Inform our approach to the ITT  
6           documentation/process.

7           "Test the market's views on what 'added value' can  
8           be provided (above and beyond cost/service)."

9           So just going to the penultimate bullet point there:

10          "Inform our approach to the ITT  
11          documentation/process."

12          So this series of RFIs were actually being  
13          undertaken or proposed in order to inform the early  
14          stages prior to the ITT; do you understand that?

15       A. Yes, that is correct.

16       Q. I think you had indicated previously that you really did  
17       not recall any of the other documents in relation to the  
18       slide decks, and so on?

19       A. I do not recall them, no.

20       Q. Do you recall this one then?

21       A. It was such a long time ago, I do not know.

22       Q. "Key RFI principles:

23           "Does not include selection criteria.

24           "It is not a pre qualification stage."

25           So it is just enquiries?

- 1 A. Yes.
- 2 Q. It is not setting out a separate formal step; that is  
3 correct, is it not? It is not trying to favour RFI  
4 participants, because you are trying to gather  
5 intelligence?
- 6 A. Correct.
- 7 Q. But you want to leave the tender process open, correct?
- 8 A. Correct.
- 9 Q. That is why it says in the next bullet:
- 10 "This exercise is without prejudice -- vendors  
11 participating in the RFI will be invited to submit ...  
12 but it does not rule out other vendors participating."
- 13 Then we have the next steps which we have already  
14 seen outlined in the documents I have already taken to  
15 you, and so I think the reason I anticipated that you  
16 would not have seen this is because you had said that  
17 you had not seen any of the others, and it would be  
18 a bit odd if you had seen this RFI document but you had  
19 not seen the others. Do you understand?
- 20 A. Yes.
- 21 Q. Yes, and you do not recall whether you had seen this  
22 one?
- 23 A. No.
- 24 Q. No. But in general terms, the use of RFIs, engagement  
25 with the market, engagement with manufacturers in order

1 to get information, even at the early stages, was part  
2 of this sophisticated tendering process you engaged in?

3 A. Yes, we could use -- that is what the purpose of the RFI  
4 would be, would be to gather information around the  
5 market to support and inform what we want to do on  
6 a tender activity.

7 Q. Right. So we have been through a number of preparatory  
8 steps and slides and so on, but let us go to the  
9 invitation to tender, if we could, which is {I2/187}.  
10 I am guessing it will probably be in tab 7.

11 Do you remember seeing this document at all?

12 A. The document is a standard Royal Mail invitation to  
13 tender document, so I am familiar with the document --

14 Q. The format.

15 A. The format of the document, thank you.

16 Q. So you are familiar with the format but you do not  
17 actually remember seeing this document?

18 A. I cannot recall whether I saw it or not.

19 Q. So you say it is the standard form. It is the OJEU ITT  
20 notice, so it is complying with those requirements of  
21 European law to put out an invitation to tender, and we  
22 see from the front page it is for heavy commercial  
23 vehicles, trailers and associated services.

24 There is a strange formality to it because the  
25 Royal Mail becomes "the authority" throughout the



1 language here, but that is what, when it refers to "the  
2 authority" in the text of the document, is being  
3 referred to; is that correct?

4 A. That is correct.

5 Q. If we just turn over the page {I2/187/2}, we will see  
6 that at 1.1:

7 "... the Authority published a notice ..."

8 But that is Royal Mail?

9 A. Royal Mail.

10 Q. 1.2:

11 " ... pre-qualified a short list of Bidders who  
12 responded to the advertisement, and those Bidders are  
13 now invited to tender for the Project."

14 So this is going through the formal stages here.

15 THE CHAIRMAN: It is considered the authority because it is  
16 treated as a public authority.

17 MR BEARD: Yes, for the purposes of the public procurement  
18 regulations. So you publish these notices under your  
19 name but, as Mr Giles says, you use the standard form of  
20 language. That is why it is. Effectively, it is to  
21 just put in context what otherwise feels slightly  
22 strange when you read this document.

23 Could we go to page 5 in this document, please  
24 {I2/187/5}?

25 So:

1           "Opportunity is provided to submit questions to  
2           clarify the meaning of questions, response requirements,  
3           the desired outcomes and other related aspects of the  
4           Tender. These should be submitted to one of the  
5           contacts detailed in paragraph 2.1 ..."

6           So could we just go back to page 2 {I2/187/2}?  
7           Those contacts -- well, we see Rob Wheeler again,  
8           because this was his project, and your name is not there  
9           because this was not your project and you were not  
10          involved in the operation of it; that is correct?

11         A. Rob Wheeler's name was listed because he was the project  
12          lead. We did all work in the same team.

13         Q. But you are not named as a contact --

14         A. No, not in this document.

15         Q. It is not just Rob Wheeler, but there are other people.  
16          We have not been through all these names but these are  
17          all people in Royal Mail involved in the project team,  
18          correct?

19         A. Correct, yes. They worked within Royal Mail fleet,  
20          Royal Mail vehicle services as was.

21         Q. So they would be able to help with specification --

22         A. Correct.

23         Q. -- details and so on as well?

24         A. Yes.

25         Q. If we just go on to the next page, 4.1, {I2/187/3} it is

1           just dividing up the lots, which is how you design these  
2           tenders. You put it in sections. But you do not  
3           remember the precise lot division being done in relation  
4           to this tender?

5           A. No, but the lotting structure does make --

6           Q. Makes sense?

7           A. -- things clear, yes.

8           Q. Understood. I am not going to go through all the terms,  
9           but you are seeking bids in relation to those and you  
10          will award contracts to the most economically  
11          advantageous offers. We can see that at the bottom of  
12          the page on the screen:

13                   "... after BAFO stage in respect of the criteria and  
14                   weightings set out in paragraph 9 below."

15                   BAFO?

16          A. Best and final offer.

17          Q. Thank you. Paragraph 9, if we skip forward, that is  
18          page 6 {I2/187/6}, it does not specifically talk about  
19          the evaluation criteria. It talks about the tender  
20          requirements. I think if we go on to the next page  
21          {I2/187/7} and if we just go down to "Evaluation  
22          Criteria", please, so here is being set out the criteria  
23          that you will use as Royal Mail for assessing the  
24          contract that comes in. That is correct, is it not?

25          A. Correct.

1 Q. We have seen "Total Cost of Ownership" and "Level of  
2 Quality Evaluation Criteria", so that is broken down  
3 into sub-categories. All of this was fairly standard  
4 framework that Royal Mail would apply in relation to its  
5 assessment of tenders that had been dealt with under the  
6 European procurement structure?

7 A. Correct. The documentation is a standard Royal Mail  
8 invitation to tender document.

9 Q. Right. If we just go back, then, to page 5 {I2/187/5}  
10 where I touched on 7.2 before, we just see the sort of  
11 detailed timetable. We have been dealing with lots of  
12 preparatory steps, then this tender comes out and so  
13 this invitation to tender was issued on  
14 11 September 2009. Then there is a "Deadline for  
15 Tenders to be submitted", "Period of negotiation and  
16 clarifications". So that is effectively the European  
17 procurement structure enabling the sort of back and  
18 forth that we were actually talking about earlier.

19 A. Correct.

20 Q. Then "Invitation to Bidders to submit BAFO", best and  
21 final offer, and then deadline for that. Then  
22 notification of the award decision and the "Alcatel  
23 standstill period". I will not go into that. That is  
24 the ability to challenge, and you are not supposed to  
25 operate your contract once you have made a decision

1           until there has been a short period within which people  
2           can challenge you. That is correct, is it not?

3           A. That is correct.

4           Q. So *Alcatel* is actually a piece of European case law and  
5           I am not going to ask you about that.

6           A. Thank you.

7           Q. So within that structure we have got the detailed  
8           layout. With that ITT, in fact there was an awful lot  
9           of information that was being sought from potential  
10          vendors, was there not?

11          A. Yes.

12          Q. Yes. So as you say in your witness statement, in  
13          response to the ITT, bidders submitted tenders to  
14          Royal Mail, and parts of DAF's tender response are in  
15          the bundle. They are, I think we could probably agree,  
16          fairly extensive, the responses to this sort of tender  
17          exercise; would you agree?

18          A. The responses allow Royal Mail to assess the total cost  
19          of ownership. So, for Royal Mail, they were not  
20          extensive. They provided a set of criteria that allowed  
21          us to evaluate that total cost of ownership while it is  
22          in operation within Royal Mail.

23          Q. So you are not accepting that the material that had to  
24          be submitted by DAF and, indeed, others was extensive?

25          A. Not -- no, I do not think it was extensive. I thought

1           it is standard information that allows Royal Mail to  
2           evaluate that tender and it is clearly outlined on the  
3           tender.

4       Q. Mr Giles, the fact that it is outlined in the tender  
5           does not mean that the response is somehow not  
6           extensive; it is the volume and nature of the material  
7           that needs to be put in in response that detects whether  
8           it is extensive or not, does it not?

9       A. Yes.

10      Q. Yes. Shall we pull up {I2/267.3}, please? This may be  
11         one of those documents that we have to click through  
12         into Excel.

13                 So this is just one spreadsheet in relation to one  
14                 type of tractor and it is setting out in detail all of  
15                 the various components that will be in it and the  
16                 various prices that are attributed to those various  
17                 elements. So this is a detailed capital costing,  
18                 effectively, so far as Royal Mail is concerned. Its  
19                 prices from DAF's point of view?

20      A. Yes, correct.

21      Q. Then if we look at {I2/267.4}, I was only looking at one  
22         of the folders, so this is referring to costings  
23         spreadsheets and indicating that Mr Tyler from DAF was  
24         sending across to Mr Platt and Mr Wheeler the remaining  
25         files for rigid costings.

1           In fact, what we see from DAF is a very extensive  
2           file of documents being provided. Actually, if one  
3           printed out the documentary material that was required  
4           to respond, it would run to hundreds of pages. Would  
5           that be fair?

6           A. I do not know.

7           Q. We do not have that material for this tender in the  
8           files but we do have it in relation to another one, and  
9           I will come back to that in due course.

10           So this material was submitted and the next step was  
11           then for Royal Mail to evaluate those different  
12           responses, and you have articulated in paragraph 5.8 in  
13           your witness statement the sorts of different factors  
14           that were used by Royal Mail to evaluate the tender  
15           responses in order to get the most commercially  
16           advantageous tender. That was your overall goal,  
17           I think --

18           A. Yes.

19           Q. -- as you have already confirmed.

20           You considered, as we have already seen, by  
21           reference to the ITT, both financial and non-financial  
22           considerations, correct?

23           A. Correct.

24           Q. As we have already seen, you carried out a careful  
25           evaluation with the aim of identifying the most

1           commercially advantageous offer, but then the next stage  
2           was to hold negotiation meetings with short-listed  
3           manufacturers, correct?

4           A. Correct.

5           Q. Yes, and of course the aim of those meetings was at  
6           least in significant part to drive down any prices that  
7           had been put to you in the responses to date; that is  
8           correct as well, is it not?

9           A. The tender negotiation meetings would cover pricing but  
10          would also cover other areas of their tender submission  
11          as well.

12          Q. Yes. I am not suggesting it might not cover other  
13          areas, but price was very significant in terms of that  
14          push-back that you were going to engage in in the  
15          further negotiations, correct?

16          A. Pricing was part of the negotiation that we would have  
17          with not only DAF but other short-listed companies as  
18          well.

19          Q. Right. Let us go on and perhaps have a look at a little  
20          bit of this.

21                 If we could go to {I2/299.2}, I think it may be  
22          tab 16 in your bundle. If we go through to page 3, you  
23          will see it says "GT 11/02/10", and "GT" is in fact  
24          Geoff Tyler. Do you know Geoff Tyler?

25          A. Yes, I know who it is.



1 Q. If we go back to page 1 {I2/299.2/1}, so this is a DAF  
2 note -- sorry, if we just go up the page just to reveal  
3 the logo. Yes, so it is a DAF note. You will see it  
4 says "Royal ITT Meeting ...", I think it is probably  
5 Royal Mail ITT Meeting ..."?

6 A. I would agree.

7 Q. Attendees. Did you attend this meeting? You are not  
8 listed there?

9 A. I am not listed so I would not have attended the  
10 meeting.

11 Q. Understood. So there is a limit to what I can ask you.  
12 There are seven people sent from Royal Mail and then  
13 there are four from DAF.

14 Then it says:

15 "RW outlined the objectives of the meeting."

16 That would be Rob Wheeler. I do not need to ask you  
17 that; that is actually spelled out in the list above.

18 "Clarify bids and offers.

19 "2 days of discussions for all bidders involved in  
20 the HVT."

21 So it was a pretty extensive negotiation process you  
22 were engaged in at this point, you would agree?

23 A. It covers two days but it does not give any information  
24 on how many bidders they were meeting over the two-day  
25 period, so I am not sure how long the meeting took place

1 with DAF or other parties.

2 Q. Right. Fair enough.

3 "The HVT is part of a Multi-Framework Provider  
4 agreement with 1 or 2 suppliers, however if one supplier  
5 ticks all the boxes soul supply would be considered."

6 I think that is probably a typo because although you  
7 drove hard bargains, it was not fully Faustian, was it?

8 No.

9 A. No, that is a typo.

10 Q. Yes, okay. So this is where Mr Wheeler is asking for  
11 the best and final offer "in the next week" and  
12 "a submission pack will be circulated". So what  
13 Mr Wheeler is saying, as I understand it, is: "You are  
14 going to have to put in your BAFO and we will actually  
15 give you some more information in relation to those  
16 matters"; is that right?

17 A. Definitely Mr Wheeler has asked for a best and final  
18 within the week. I am not sure, because it does not  
19 clarify, what the submission pack is or contains.

20 Q. Right. So we would need to ask Mr Wheeler that,  
21 I guess.

22 Then:

23 "The offers will be assessed over the next 2 weeks  
24 and then each category will be advised if we are to be  
25 [sole] or shared supplier."

1           So at this point, one of the things you are doing as  
2           Royal Mail is saying, "Well, you could be the sole  
3           supplier, S-O-L-E, or you could be one of two  
4           suppliers".

5           A. Correct.

6           Q. Is that what you would understand from this?

7           A. Yes.

8           THE CHAIRMAN: Can I just ask you about the timing of this?

9           It is February 2009. I thought that was the start of  
10          the process.

11          MR BEARD: It is not. It is an error. As well as it being  
12          "Royal ITT", it is actually February 2010 we have  
13          identified. That was why I went to the date at the end  
14          of the note to begin with. I am sorry, sir --

15          THE CHAIRMAN: I did not pick that up, sorry.

16          MR BEARD: No, no, that was just confirming. Because what  
17          actually happened was that the tendering process went  
18          beyond the December 2009 that had been envisaged in  
19          those slides I took the witness to earlier. So actually  
20          these negotiations were occurring in 2010 rather than in  
21          the latter part of 2009, as had been envisaged. But  
22          given Mr Giles' lack of involvement in this, I cannot  
23          perhaps get into the details of --

24          THE CHAIRMAN: The contract itself started on  
25          1 January 2010; is that right?

1 MR BEARD: It is dated September 2010 in the end, the  
2 contract. So we will come back to that. I am going to  
3 go to the contract, sir.

4 THE CHAIRMAN: Okay.

5 MR BEARD: So essentially what is being said here is: "Give  
6 your best price as the sole or multiple supplier", is it  
7 not? Two possibilities?

8 A. It is asking for a best and final offer, but for either  
9 model, for a sole supplier or a multi-supply with one or  
10 two --

11 Q. The reason that Mr Wheeler would have been -- again, you  
12 were not there, but would you understand Mr Wheeler to  
13 be suggesting that because one might expect that as  
14 a sole supplier someone would be willing to offer  
15 a better price?

16 A. That could be the aim. Again, it is what Wheeler has  
17 written --

18 Q. It says:

19 "The process will be completed by the end [of] April  
20 with contracts issued late April/early May for a 5-year  
21 period."

22 So again, looking at a long-period contract here?

23 A. The notes do suggest that, yes.

24 Q. If we go to the final page, I think this is probably  
25 more commentary from DAF than it is necessarily subject

1 to the discussion, but you will see:

2 "Royal Mail has set a target of a 10% reduction in  
3 operating costs over the life of the contract."

4 So Royal Mail is putting severe pressure on the  
5 vendors, saying "Drive down costs", correct?

6 A. I do not know what meaning that Geoff Tyler's notes have  
7 around operating costs, whether that would be linked and  
8 what that would be linked to.

9 Q. Then we get:

10 "Royal Mail are looking for the best and final offer  
11 from DAF Trucks, if this meets all their requirements  
12 within the Multi-Framework Agreement the need to conduct  
13 Mini Auctions/E Auctions could be eliminated and Sole  
14 Supplier status would be awarded!

15 "In submitting our BAFO economies of scale would be  
16 considered."

17 This is really just articulating from DAF's point of  
18 view the point I was putting to you, that if you are  
19 a sole supplier it is going to be anticipated that you  
20 offer better prices, correct?

21 A. Looking at the notes from DAF, that could be  
22 interpreted, yes.

23 Q. Just to finalise here, I think you have made this clear  
24 in 5.16, but after those negotiation meetings, of which  
25 this is one set of notes, Royal Mail would invite best

1 and final offers and then would have further  
2 negotiations in relation to those final offers; is that  
3 correct?

4 A. Yes, once we had got the -- we would invite best and  
5 finals (inaudible) through their -- yes, and conduct  
6 negotiations to establish that best and final offer.

7 Q. So you would get the best and final offers and then you  
8 would have further negotiations to put further  
9 pressure on?

10 A. No. We could have multiple rounds of negotiations ahead  
11 of that, but we would go -- once we have got that best  
12 and final offer, that is the best and final offer.

13 Q. Would you go back to vendors thereafter?

14 A. Only if there is any areas of clarification that is  
15 needed on an offer.

16 Q. So there could be further engagement with vendors there  
17 afterwards?

18 A. Could be further engagement, yes.

19 Q. That could be on any aspect of the tender?

20 A. Yes.

21 Q. So overall what we have seen is a tender process with  
22 a great deal of planning, multiple steps over a long  
23 period and all designed to get the most advantageous  
24 result for Royal Mail, correct?

25 A. Yes.

- 1 Q. That includes in particular on price?
- 2 A. Price is included as part of that evaluation criteria.
- 3 Q. I think that is a yes, Mr Giles. Is that a yes?
- 4 A. It is a yes.
- 5 Q. Thank you. Now, we have been dealing with 2009/2010
- 6 which was the period when you, according to your witness
- 7 statement -- and as you have confirmed from 2007, there
- 8 was a procurement manager, but obviously the materials
- 9 we have seen you had not seen. I am going to step back
- 10 a little bit to some of the earlier contracts, some of
- 11 which you have exhibited to your witness statement.
- 12 The contract that I want to start with is TC02011.
- 13 I am just giving you the references and then I will give
- 14 you the documents, but I am just giving you where I am
- 15 going. So, very broadly speaking, that was a contract
- 16 that in fact started in August 2004; do you remember it?
- 17 A. No.
- 18 Q. Right. But, as I say, you have exhibited various
- 19 documents to that tender for contract TC02011 to your
- 20 witness statement. I just want to ask about some of
- 21 those. You presumably, given the answer to that
- 22 question, do not recall that the tender process began in
- 23 November 2003?
- 24 A. No.
- 25 Q. Can we just call up document {I1/317.4/1}, please? Now,

1           this is what I was going to take you to in terms of the  
2           volumes of material that have to be put forward in  
3           relation to a tender process, because here we do  
4           actually have these materials. This is actually an  
5           internal DAF email, which is someone called  
6           Andy Shadwell communicating with someone called  
7           Christine Kerslake, saying:

8                 "Christine.

9                 "Can you please help me out today. Can you please  
10                print all of the attached files on to paper pre punched  
11                and compile in a big 4 ring folder with dividers -- for  
12                me to take away today.

13                "Sorry to ask for such a menial task but this is  
14                a lot to print on my little machine."

15                So this is Mr Shadwell asking for the ten tender  
16                documents that had been sought to be provided in  
17                connection with the TC02011 tender, and I am not going  
18                to take you through them because I do not think you will  
19                recall them. I am happy to call them up but I do not  
20                think, from your answer you have given, you will not  
21                remember any of these documents?

22           A. I may recognise them through the file names et cetera,  
23                but they are pretty standard documents on specifications  
24                that are listed on the file names in the email.

25           Q. Let us just have a look. {I1/317.5/1}, please. So this



1 is the draft master purchase agreement that was being  
2 proffered, so this will set out all the terms and  
3 conditions. Obviously, in the draft that comes in from  
4 DAF, it does not have a contract number, contract name  
5 or date on it, which is why you have the red bits.

6 A. Correct.

7 Q. But you do not remember seeing this document?

8 A. Not this specific document, but it looks like a typical  
9 master purchase agreement call off contract cover page.

10 Q. But you did not actually see this one?

11 A. No.

12 Q. I am happy to take you --

13 A. I cannot recall seeing this one.

14 Q. No, understood. Shall we just try {I1/317.502/1}. This  
15 is a master contract hire agreement, so this is an  
16 alternative means. You do not remember seeing that?  
17 I am not sure you will have all of these in the bundle,  
18 so --

19 THE CHAIRMAN: Are these draft documents?

20 MR BEARD: So these are the submissions that are provided by  
21 DAF in response to the tender process that began in  
22 November 2003. I am just clarifying whether or not the  
23 witness recalls any of them.

24 THE CHAIRMAN: When you say "recalls any of them", do you  
25 mean the detail of them or the --

1 MR BEARD: Yes, well -- I am so sorry, I misspoke. These  
2 are the documents provided by Royal Mail as part of the  
3 tender process, and therefore I just wanted to see  
4 whether or not the witness had seen them. I think what  
5 the witness has fairly said is "I do not remember these  
6 going out in relation to this contract, but I do  
7 remember seeing these sorts of documents".

8 THE CHAIRMAN: Yes.

9 SIR IAIN MCMILLAN: So it is a pretty standard template.

10 MR BEARD: Yes, I think that is what is being said.

11 If we could just go to 505 {I1/317.505}, this is  
12 where we are get into something rather more specific  
13 about the particular trucks that are being tendered for.

14 You will see top left-hand side, "Date  
15 30th September 2003", "Amendments: 03.10.03". It is to  
16 do with a 7.5-tonne chassis cab.

17 Now, you have then got a list of various criteria.  
18 This is only the introduction, there are many pages.  
19 You do not remember seeing this specific specification?

20 A. Maybe not this specific specification, but this is  
21 a standard specification document that would be used for  
22 the purchase of heavy goods vehicles. We also -- when  
23 I say "we", Royal Mail fleet also had specification  
24 documents in a very similar format for our light  
25 commercial vehicle purchases as well. So I do recognise

1 the format of the document similar to the format of the  
2 contracts previously shown.

3 Q. What it is asking you for is lots of details about --

4 A. Correct.

5 Q. I am just taking you through some of the documents that  
6 you send out requiring the tenderers to fill in, just to  
7 illustrate the point we were discussing earlier about  
8 the extent of the material that has to be submitted.

9 You recognise these documents?

10 A. Yes.

11 Q. You are not suggesting these are in any way abnormal,  
12 you are saying they are in fact standard, as  
13 I understand it, or broadly?

14 A. Yes, this looks like a standard document that would be  
15 used for the specification of a truck or a vehicle.

16 Q. Yes. So in fact, I am not going to --

17 THE CHAIRMAN: Are you going to ask any questions about the  
18 content of these documents?

19 MR BEARD: I do not think there is any point in asking  
20 questions about the content of these documents. I just  
21 wanted to test the extent to which the witness was  
22 familiar with these sorts of documents and the extent of  
23 them. That is all I am doing in relation to this, no  
24 more. I am going to move on.

25 DAF in fact submitted its bid on 4 January 2004. We

1 do have a consolidated PDF of this which runs to around  
2 178 pages, but, again, I am not going to take you  
3 through that in detail.

4 Could we just call it up at {I1/329.2/1}, please?  
5 So this is indexing what was required from DAF in  
6 relation to the tender that had been put out, and this  
7 is just the index to the 178 documents [sic]. But you  
8 did not actually see this document, did you, the DAF  
9 response?

10 A. No.

11 Q. You were not involved in reviewing it at the time?

12 A. No.

13 Q. I just want now to go to some of the documents setting  
14 out Royal Mail's pre and post-negotiation strategy for  
15 this contract, after consideration of the DAF and other  
16 bids.

17 So this bid had come in and I just want to look at  
18 some of the material in relation to that. Could we go  
19 to {I6/226/1}, please? So this is a pre-negotiation  
20 strategy document. It is at tab 22, I think, in your  
21 bundle. So you will see "Pre-Negotiation Strategy" is  
22 the heading. We understand this is a Royal Mail  
23 pre-negotiation strategy document in relation to  
24 contract number TC02011 and another contract, TC03032.

25 "Description 7.5t [trucks] ...

1 "Business Vehicle Services.

2 "Customer Paul Gatti", which is a name we saw  
3 earlier.

4 Given what you have said so far, you did not see  
5 this document at the time it was prepared?

6 A. No.

7 Q. So it obviously goes without saying that you were not  
8 involved in preparing this material?

9 THE CHAIRMAN: I am not sure you have actually asked  
10 Mr Giles what his actual involvement in the 2004  
11 tendering process was.

12 MR BEARD: I have not, no.

13 THE CHAIRMAN: Were you intending to?

14 MR BEARD: Not at the moment, sir, no. Because I am working  
15 my way through documents that Mr Giles himself has  
16 exhibited to his witness statement, you see.

17 THE CHAIRMAN: Yes.

18 MR BEARD: So I am just testing a number of the documents  
19 that have been exhibited and seeing what he can assist  
20 us with in relation to them, given that they are part of  
21 his witness evidence. But I am already understanding --

22 THE CHAIRMAN: I personally would find it helpful to know  
23 what his actual involvement in the 2004 tendering  
24 process was.

25 MR BEARD: I am very happy to do that.

1           Mr Giles, I think from what you are telling us so  
2           far, you were not involved in the 2004 tender --

3       A. Not that I can recall, and just looking at the  
4           individuals that have prepared the paper, so Tony Shaw,  
5           he used to lead the vehicle procurement team, and you  
6           see from other names, which is Simon Arnott, so he did  
7           that role before him and it is now Rob Wheeler.  
8           Nigel Peat used to work for Royal Mail in a similar  
9           guise to where Rob Wheeler led the 2009 tender from. So  
10          I was part of the team but did not actually participate  
11          in this tender, to my knowledge.

12       Q. Of those names that you just mentioned, Mr Shaw is still  
13          employed by Royal Mail, is he not?

14       A. No, he is not, he retired.

15       Q. When did he retire?

16       A. I cannot recall the exact year.

17       Q. But Mr Peat has retired?

18       A. Mr Peat has retired and Mr Murphy has retired also.

19       Q. I think there may be a limit to what I can ask the  
20          witness about these documents in the circumstances,  
21          although they are exhibits to his witness statement.

22       THE CHAIRMAN: I understand that, obviously, the documents  
23          have been put before us in that way and maybe you are  
24          saying Mr Giles is not the most suitable witness to  
25          speak to them, but I am not sure there is much benefit

1 in going through documents that we can read for  
2 ourselves and which Mr Giles was not actually personally  
3 aware of or involved with at the time.

4 MR BEARD: Well, that is the difficulty we have, yes,  
5 absolutely.

6 THE CHAIRMAN: I understand.

7 MR BEARD: Can we go slightly further down this document, if  
8 we may? I just want to ask you about how Royal Mail  
9 carried out some analysis in relation to tender  
10 requests.

11 Now, obviously, you have not seen this document at  
12 the time, but I just want to look at this example to see  
13 to what extent this is a standard approach that you  
14 would adopt in relation to the sorts of analysis you  
15 would undertake for negotiation. So I think in these  
16 circumstances what has happened is you have had bids in,  
17 and you will see in the second paragraph:

18 "For the 7.5t units there are four contenders, DAF,  
19 MAN, Iveco and Daewoo. Each of these potential  
20 suppliers will be invited to negotiation meetings."

21 So this is a situation where you have got four  
22 contenders, you are into the negotiation process that we  
23 were discussing previously --

24 A. Correct.

25 Q. Yes. There is a concern about design features on Iveco

1           and Daewoo, so this is the specification issue that we  
2           touched on previously?

3           A. Correct.

4           Q. Yes, and that is actually to do with oil filler caps.

5           Then you have:

6                     "The current ranking between the four bidders is as  
7           follows ..."

8                     You have got DAF, Iveco, MAN, Daewoo and you have  
9           got "Financial", which is presumably the TCO analysis?

10          A. Correct.

11          Q. But then you have got a "Total Score" which takes into  
12          account both the financial and non-financial?

13          A. Correct.

14          Q. So then you carry out a ranking in relation to them all.

15                     So you are thinking about the ranking and you are  
16                     thinking about re-engaging in negotiation with each of  
17                     them in the light of these rankings, correct?

18          A. Correct.

19          Q. Then the strategy paper is setting out the aim of those  
20          negotiations. You see that at the bottom:

21                     "The aim of the negotiations will be to reduce the  
22                     price of the chassis from all suppliers in the order of  
23                     10%."

24                     Now, I am not going to ask you whether or not that  
25                     was because it is clear that you do not know, but that



1 approach of ranking people and then setting out the  
2 strategy for what you wanted out of that further round  
3 of negotiations after you had the initial tenders, that  
4 was the standard approach, correct?

5 A. That was the standard -- it looks like that was the  
6 standard approach for this tender, yes.

7 Q. But, more generally in relation to tenders, you received  
8 the tenders, you did scoring, comparative scoring, and  
9 then you set out the aims of further negotiations,  
10 presumably; is that correct?

11 A. Yes, we would evaluate those tenders and set out the  
12 aims for those tender meetings.

13 Q. As we can see here, one of those aims may well be to try  
14 and push down the basic prices of all the chassis?

15 A. Yes, correct.

16 Q. I think I want to clarify the extent to which you think  
17 that you provided details of that ranking or comparative  
18 prices to the different tenderers in the course of those  
19 negotiations. I think you have suggested you did not  
20 generally do that, but you are not aware of the position  
21 then?

22 A. Sorry, I do not know on that one.

23 Q. You do not know.

24 Just whilst we are in the ranking, at the moment in  
25 this negotiation, it is ranking DAF at 4, but the "Total

1           Score" is 1 for DAF. So that would be suggesting that  
2           DAF had done extremely well in relation to the technical  
3           performance and supply elements of the assessment; is  
4           that correct?

5           A. Yes, that is a fair assessment to make.

6           Q. Now, I am going to check -- I am fairly confident that  
7           you are not going to be able to assist in relation to  
8           this. Could we go to {I1/349.3}?

9           SIR IAIN MCMILLAN: Can I ask a question?

10          MR BEARD: Yes, of course, sir.

11          SIR IAIN MCMILLAN: I see in the final paragraph:

12                   "The aim of the negotiations will be to reduce the  
13                   price of the chassis from all suppliers in the order of  
14                   10%."

15                   That is the same percentage figure that came up in  
16                   looking for a reduction in operating costs of 10%. Is  
17                   that these two figures coming together so that that is  
18                   a contribution to the reduction of 10% in the operating  
19                   costs of Royal Mail?

20          MR BEARD: I think the difficulty -- I mean, Mr Giles can  
21                   obviously answer or seek to answer but, obviously, the  
22                   10% document that I took you to he had not actually seen  
23                   and did not know about, but it was also in 2009 and  
24                   therefore I imagine that he may not be in a position to  
25                   answer this.

1           But just going to the documents, because that 10%  
2           was a discussion in 2009, I think it is unlikely that  
3           that was the consideration here because this is 2004.

4   THE CHAIRMAN: Do you want to answer that, Mr Giles?

5   A. I do not know whether the two are linked or whether it  
6           is just coincidence that the 10% --

7   THE CHAIRMAN: Yes.

8   SIR IAIN MCMILLAN: I know the years are different, but  
9           I just wonder if there was a link from one 10% to the  
10          other over that timespan.

11   MR BEARD: We do not know that sort of detail. I think  
12          these are matters we will have to come back to looking  
13          at the documents. Unfortunately the witness is not in  
14          a position to assist us in relation to this.

15   THE CHAIRMAN: Can I try one other question on this  
16          document?

17   MR BEARD: Of course.

18   THE CHAIRMAN: The brackets under the "Financial" line and  
19          the ranking, at the end:

20                 " ... (variance is from £3,282 to £3,451/month)."

21                 Would that be, do you think, a reference to the  
22          different prices from the manufacturers?

23   A. I believe that could be a variance on the total cost of  
24          ownership between the company in first place, which is  
25          Daewoo, which would be 3,282 to the company in fourth

1 place, which is DAF at 3,451.

2 THE CHAIRMAN: Understood. Thank you.

3 MR BEARD: I was not necessarily going to ask the witness  
4 further questions about this bit, but if we go to page 3  
5 in this document {I6/226/3}, I had intended to ask  
6 questions about this document but I am not sure it is  
7 going to be productive.

8 If we just go to page 3, this is in fact the  
9 "Post-Negotiation Strategy". So was it standard to  
10 produce this sort of document, Mr Giles, to discuss the  
11 position post negotiations?

12 A. At that time, yes.

13 Q. You will see there the discussion of "Background". If  
14 we go down to "Strategy", it says:

15 "Post tender negotiations were undertaken with [the  
16 four] as described in the pre-negotiation strategy  
17 [which was the document we were just looking at] ...  
18 The aim of the negotiations was to reduce the price ...  
19 from all suppliers in the order of 10%."

20 Hoped that DAF, because it was in fourth place,  
21 would reduce the most. Then you have under there  
22 "Recommendation", and there you actually see for each of  
23 the entities that were negotiated with, MAN, Daewoo, DAF  
24 and Iveco, the broad outcome of those negotiations.  
25 That was presumably a standard approach at that time,

1 was it, to articulate the outcome of the negotiations?

2 A. Yes.

3 Q. Thank you, and you will see there that DAF substantially  
4 improved their offer in the negotiations, at the top of  
5 the following page {I6/226/4}.

6 I just want to pick up one thing that I think you  
7 may well be able to clarify here. You say:

8 "DAF improved their offer by £1,692.00 per unit."

9 So that is per truck, is it not?

10 A. That is correct.

11 Q. "They also increased the labour rates paid for in-house  
12 warranty work by 9% ..."

13 Now, when I first read that, I thought that was  
14 a slightly odd outcome of the negotiation, but one has  
15 to read that carefully because it is about in-house  
16 warranty work, is it not?

17 A. It is. That is correct.

18 Q. What is in-house warranty work, Mr Giles?

19 A. Royal Mail operate a number of workshops, garages, where  
20 we maintain our own vehicles rather than putting them  
21 out to the dealerships. Within the contracts that we  
22 have with DAF Trucks, DAF -- we are -- our technicians  
23 can undertake warranty work on those trucks and then we  
24 claim back from DAF the labour rate for Royal Mail  
25 undertaking that warranty work on that truck. Hence the

1 reference to the warranty in-house labour rate.

2 Q. Thank you, Mr Giles. In fact what is being said is that  
3 DAF will pay Royal Mail more in labour rates for  
4 in-house warranty work on DAF Trucks; that is correct,  
5 is it not?

6 A. Yes, that was an outcome of that tender.

7 THE CHAIRMAN: That was(?) better for Royal Mail?

8 A. Yes.

9 MR BEARD: Yes, I am just clarifying. That is helpful.

10 Then you will see further down the page the results  
11 of the evaluation model following that post-negotiation.  
12 Just picking up, the non-financial score for DAF was  
13 actually 30% and that is out of 30%, is it not?

14 A. It does not specifically say that, but yes, I would --  
15 looking at this paper and the way that it is written,  
16 that would have been out of 30% --

17 Q. I think we can --

18 A. -- because we tended to give the top scorer the maximum  
19 marks within that tender.

20 Q. It is more than that, is it not? Because 30% is  
21 actually the perfect score if it is out of 30?

22 A. Yes, 30 out of 30 is a perfect score.

23 Q. Now, in your witness statement, you take issue with the  
24 idea that DAF is a premium product, but so far as  
25 Royal Mail was concerned at that time, it was perfectly

1 hitting the relevant specification scores, was it not?

2 A. I guess -- can I just refer back to my comment in the  
3 witness statement?

4 Q. Of course. It is your second statement.

5 A. My witness statement looks at how Royal Mail viewed the  
6 products and the manufacturers over -- to the best of my  
7 knowledge, of which we put DAF as the mid-range product.  
8 Yes, DAF scored 30 out of 30 on this particular tender,  
9 so they scored very well for Royal Mail on the questions  
10 that we asked. But I still maintain that DAF as  
11 a market position is more mid-range than premium.

12 MR RIDYARD: Mr Beard, may I just ask a question of Mr Giles  
13 on this?

14 MR BEARD: Of course.

15 MR RIDYARD: I notice that on that same table Daewoo gets  
16 a 70%, presumably a perfect score on the pricing.

17 A. Yes.

18 MR RIDYARD: Does that imply that these percentages,  
19 although they are expressed in percentages and, you  
20 know, if you like, Daewoo got 100% on pricing, is that  
21 how these things are always presented? Does a perfect  
22 score mean simply that you are the best of the four or  
23 in some cases might the best person achieve less than  
24 100%?

25 A. Generally, the best people did achieve the maximum

1 percentage, but I suppose it does not necessarily mean  
2 that, on the individual scoring, they scored 100 out of  
3 100. They may have scored 90 out of 100 but the  
4 percentage would have been reflected as the maximum  
5 percentage because they scored the highest out of all  
6 the bidders.

7 MR RIDYARD: Thank you, yes.

8 THE CHAIRMAN: It is sort of relative?

9 A. Yes. So if a company -- one scored 90 out of 100, two  
10 85, they would score 30% and then ratio down from 30 to  
11 however that calculates across.

12 THE CHAIRMAN: What it certainly is not is a percentage.

13 A. No.

14 MR BEARD: As I say, I am going to move on but I think I may  
15 move on relatively briefly on this. Could we go to  
16 {I1/349.3/1}. These are some handwritten notes from  
17 Mr Shadwell and there is also some notes from  
18 Mr Ashworth about a meeting on 10 June 2004, talking  
19 about this particular 7.5-tonne tender. You see at the  
20 top left --

21 A. Yes.

22 Q. -- "Royal Mail  
23 "7.5t tender.  
24 "10 [June 20]04".

25 Two of the people I think you mentioned just now,



1 Mick Goodwin and Nigel Peat, were involved.

2 A. Definitely Nigel Peat. Mick Goodwin was not on the pre-  
3 or post-negotiation meetings. It was Tony Shaw.

4 Q. Tony Shaw, thank you very much. But Mick Goodwin, who  
5 was he?

6 A. Mick Goodwin was a buyer within that procurement team at  
7 the time, I understand.

8 THE CHAIRMAN: Sorry, Mr Beard, you said these were notes of  
9 Mr Ashworth?

10 MR BEARD: No, Shadwell.

11 THE CHAIRMAN: I think you said also some notes from  
12 Mr Ashworth.

13 MR BEARD: There are also some notes.

14 THE CHAIRMAN: Some other notes.

15 MR BEARD: Yes, there are other notes as well. I am sorry,  
16 I was not clear enough in my ...

17 The initials "RJA" and "AS", just below Nigel Peat,  
18 I think refer to Mr Ashworth and Mr Shadwell.

19 THE CHAIRMAN: Yes.

20 MR BEARD: Do you remember anything about that meeting? You  
21 are not mentioned but presumably you did not attend?

22 A. No, I am not mentioned so I would not attend.

23 Q. No, understood. I do not think I can take questions on  
24 those notes further in those circumstances. You do not  
25 recall discussing any of these matters with Mr Peat or

1 Mr Goodwin?

2 A. No.

3 Q. I am sorry, I am just taking a moment because I think,  
4 in the light of the fact that various of these documents  
5 the witness cannot speak to, I think I can move through  
6 rather more quickly. (Pause)

7 I think we can go to {I6/226}, if we may, page 13,  
8 please, {I6/226/13}. I am just taking things slightly  
9 out of order.

10 So this is an exchange between Moira Brennan and  
11 Tony Shaw, copying in Phil O'Gorman and other people,  
12 including Alan Ellingham, so this is an internal  
13 Royal Mail email.

14 A. Correct.

15 Q. I do not know whether or not you have seen this before?

16 A. No. Well, I do recall the ladies and gentlemen on the  
17 email.

18 Q. Yes. So --

19 A. But maybe not the content.

20 Q. Not the content. Do you actually remember seeing this?

21 A. No, not dating back to 2004, no.

22 Q. No, I see. Sorry, Moira Brennan, she is the financial  
23 director for logistics so she is effectively the  
24 financial director dealing with anything to do with  
25 procurement amongst other things; would that be right or

1 not?

2 A. I do not know. I would be guessing the answer.

3 Q. Right. Tony Shaw, you have already given us details;

4 Phil O'Gorman and Alan Ellingham. John Murphy?

5 A. John Murphy was Tony Shaw's manager, so Tony reported

6 into John.

7 Q. If we can just go down the page, please, so this is

8 18 June 2004:

9 "Please find attached the Strategy Result  
10 recommendation.

11 "If you could give this your attention at your  
12 earliest opportunity and let me have any questions it  
13 raises. The recommendation is high risk, but with  
14 potentially high rewards."

15 Do you remember what this was talking about? You  
16 presumably do not?

17 A. Do you mind if I refer back to the pre-negotiation  
18 strategy we were looking at?

19 Q. Yes, certainly. I can actually flick you back to it.

20 It is in the same document at page 3 {I6/226/3}.

21 Did you say pre-negotiation or post-negotiation?

22 A. Sorry, yes, just on the next page on this strategy.

23 Q. Sorry, just to be clear before you read that. Are you  
24 just going, Mr Giles, to tell us your inference from the  
25 post-negotiation strategy as to what that email might

1 mean in the circumstances? You do not actually remember  
2 yourself?

3 A. In 2004, Royal Mail purchased 25 trucks from Daewoo as  
4 part of that award and awarded two contracts, as  
5 I understand, to DAF and to Daewoo. So I am aware that  
6 we bought contracts with Daewoo, high risk -- and I have  
7 seen some of the evaluations from Mr Platt in my witness  
8 statement put(?) forward, so I am obviously leaning  
9 towards that that is the high-risk strategy given what  
10 had been written on the post-negotiation strategy.

11 Q. I think we would probably agree with you but it is not  
12 something you know about or recall?

13 A. No, I am aware we bought 25 Daewoo trucks, we did  
14 actually purchase from them.

15 Q. Right, thank you. But you do not remember seeing that  
16 email chain at all?

17 A. I do not know whether it was classed as a high-risk  
18 strategy, no.

19 Q. Do you remember seeing that email chain?

20 A. No.

21 Q. Can we just go back to that email chain itself, please,  
22 on page 14 {I6/226/14}?

23 I am going to leave that. There are some other  
24 emails but I think, given that you do not know about  
25 those ones and you had not seen them and those are in

1 fact exhibited to your witness statement, I do not think  
2 that it is going to be worthwhile me taking you to other  
3 emails.

4 I am going to go on to one or two other points about  
5 TC02011 but I wonder whether now might be a good moment  
6 just to pause --

7 THE CHAIRMAN: Are you okay for time?

8 MR BEARD: Yes, I think I probably am going to be okay for  
9 time, yes, because I envisage, given a number of the  
10 answers, that one of the things I may be doing during  
11 the short adjournment is putting a line through some of  
12 the questions, because this witness has not seen the  
13 documents.

14 THE CHAIRMAN: Yes, all right. So we will resume at  
15 2 o'clock.

16 MR BEARD: I am grateful.

17 THE CHAIRMAN: Mr Giles, as you probably know, whilst you  
18 are giving evidence, you are not allowed to talk about  
19 the case or your evidence to anybody else, so if you can  
20 make sure you do that.

21 A. Will do.

22 THE CHAIRMAN: Thank you very much. We will see you at  
23 2 o'clock.

24 (12.57 pm)

25 (The short adjournment)

1 (2.00 pm)

2 THE CHAIRMAN: Yes, Mr Beard.

3 MR BEARD: Thank you.

4 Good afternoon, Mr Giles.

5 Before lunch, I was going to some material about  
6 TC02011, the contract, and I think we established you  
7 were not involved in the negotiation of that contract  
8 but I just want to go to it itself. So it is  
9 {I2/190/1}. I think it is at 33 in your bundle perhaps.

10 You will see there the contract start date,  
11 1 August 2004. On the face of it, it is only for  
12 a year, but in fact we know that this contract lasted  
13 for around five and a half years. Do you remember that?

14 A. I am aware that contract extensions were a normal course  
15 of practice for Royal Mail.

16 Q. Yes. I think in your evidence you say that your aim was  
17 to have contracts between one and five years to provide  
18 a period of stability; that is correct, is it not?

19 A. Correct.

20 Q. Yes. So this was for, as it says, 7.5-tonne trucks. So  
21 the majority of the truck fleet within Royal Mail was  
22 7.5-tonne trucks, I think, we know that?

23 A. Yes, looking at volume.

24 Q. If we go over the page to page 6 {I2/190/6}, "Volumes":

25 "Royal Mail gives no commitment, to either the

1           number of vehicles, or to the value of orders to be  
2           placed against this contract."

3                     So this is you offering no volume commitment at all.

4           That is correct, is it not?

5           A. That is correct.

6           Q. Yes, and that was a standard approach in relation to  
7           your contracts, correct?

8           A. Correct.

9           Q. Then on "Prices", it says:

10                    "Price for Vehicles will be set out in the Price  
11           Matrix.

12                    "Prices will be fixed for all orders placed prior to  
13           the anniversary of the date of signature of the  
14           Agreement."

15                    At the moment it is only a year long, correct?

16           A. Correct.

17           Q. "Prices will be reviewed on the anniversary of the date  
18           of signature of this agreement."

19                    So actually it is envisaging that there would be  
20           extensions, because otherwise the idea of a review at  
21           the end of a one-year contract is somewhat strange. But  
22           that does not matter, I do not need to ask you about  
23           that.

24                    Then the fourth point is:

25                    "The maximum price change applied at such

1           anniversaries will be in accordance with the proportion  
2           of content in the vehicle, and change in price indices  
3           for the raw materials, steel, plastic, and rubber as  
4           published by the Society of Motor Manufacturers &  
5           Traders, and will remain fixed for a period of 12  
6           calendar months."

7           What this is saying is there could be price changes  
8           owing in relation to SMMT cost indices; is that correct?

9           A. That is correct.

10          Q. But actually, what it is saying is only if that is  
11          agreed between the parties, that is how you operated the  
12          contract, is it not? Do you recall?

13          A. There was a negotiation and a discussion around the  
14          pricing if DAF wanted to adjust that pricing.

15          Q. If you said no to an adjustment of pricing, even if it  
16          was related to raw material costs, the pricing did not  
17          change, did it?

18          A. I cannot recall DAF providing any data around raw  
19          material, but I do not know, it was 2004.

20          Q. Certainly there would be no possible changes other than  
21          in relation to raw material costs, so, for instance,  
22          exchange rates are irrelevant for these purposes?

23          A. Correct, for this contract.

24          MR RIDYARD: Mr Beard, is that an obligation on DAF to carry  
25          on supplying trucks after 12 months if the price was not



1           agreed?

2           MR BEARD: I think in relation to this -- I will  
3           double-check the nature of the option in relation to  
4           extension because I do not have the answer to that  
5           immediately. We will come back to it. We know that it  
6           was actually rolled forward for five and a half years,  
7           but I cannot remember whether or not it was essentially  
8           a call option on Royal Mail's part in relation to it.  
9           I will have to check that. I am sorry, sir.

10           In fact, there was a small price reduction in  
11           April 2005. Do you recall that?

12           A. No, not...

13           Q. I am just going to take you to {I1/425.1/1}, if we  
14           could, which is tab 36, I think, in your bundle. It is  
15           an email from Andy Shadwell to Nigel Peat, who we have  
16           heard mentioned, copying Mick Goodwin and Ray Ashworth.  
17           It says:

18           "Nigel

19           "Further to our meeting last Friday 5th August ..."

20           So there had clearly been a meeting on 5 August.

21           Did you attend that meeting?

22           A. Not to my knowledge, no.

23           Q. Not to your knowledge, no. So you are not aware that  
24           the meeting was about TC02011 or TC02012, which was the  
25           larger truck contract?

1 A. Not that I am aware of.

2 Q. No. So do you recall at any point DAF requesting  
3 a price increase of £200 per truck around this time? If  
4 you go down to the penultimate bullet, under "Contract  
5 Pricing" --

6 A. Yes.

7 Q. -- you can see that there.

8 A. No, I did not recall that to my knowledge, no.

9 Q. So this is a discussion, and if you go to the bullet  
10 above:

11 "The prices as detailed in Contract TC02012P [this  
12 is for the larger trucks] are extended for all Euro 3  
13 orders placed that we are capable of supplying over the  
14 12-month extension period."

15 So that was holding prices for these larger trucks  
16 and then the second bullet was asking for £200 in  
17 relation to the smaller trucks. Do you see that?

18 A. Yes.

19 Q. But you do not know about those.

20 Do you remember anything about digital tachographs  
21 and DAF agreeing to swallow the cost in relation to the  
22 installation of digital tachographs?

23 A. [No verbal response]

24 Q. No.

25 So could we just go to tab {I2/193/1}, please? This

1 is 38 in your hard copy bundle. So here we have got  
2 contract number, 2011a, June 2004,  
3 date: 22 November 2005. So what we have got here is  
4 a reference to the original contract, and this is an  
5 amendment advice number 3, just over a year later. Do  
6 you see that?

7 A. Yes.

8 Q. The contract extension, you can just see below that, is  
9 from 22 November 2005 to 31 December 2006. So this is  
10 what you were talking about, about the extension on an  
11 annual basis, effectively?

12 A. Yes.

13 Q. Have you seen this?

14 A. I have seen -- not before today, or I do not recall one  
15 before today but ...

16 Q. No. Well, obviously you have seen it now because I have  
17 just shown it to you, yes.

18 A. Yes, sorry.

19 Q. All the questions I ask you about documents are not  
20 whether you have seen them when I put them to you; it is  
21 previously, Mr Giles.

22 In any event, it says under that:

23 "NB. All other terms and conditions contained  
24 within the MPA remain the same."

25 So that would include pricing, would it not?

- 1 A. Correct, yes.
- 2 Q. So the attempt to get £200 more per truck in relation to  
3 the extension was effectively rebuffed following that  
4 negotiation. You understand that?
- 5 A. Yes.
- 6 Q. Now, we know that this contract, I am not going to go  
7 through all the amendments, but we know that the  
8 contract was extended again to the end of 2007 and then  
9 it was again extended up to 2009. So it was effectively  
10 five and a half years. But in November 2008, DAF  
11 approached Royal Mail for a price increase. Do you  
12 remember this incident in November 2008? You referred  
13 to it in your second witness statement.
- 14 A. Yes.
- 15 Q. Let me take you to one or two of the documents, if  
16 I may. So if we could go to {I2/101/1}, please. So  
17 this is a letter that, on the top left-hand side, says  
18 "Attn of Mr Simon Giles", yourself. If we flick on two  
19 pages, we can see that it was from Andy Shadwell?
- 20 A. Yes.
- 21 Q. Just down at the bottom. So if you can just go back,  
22 I am not going to go through all of it. There is a  
23 cri de coeur in here from Andy Shadwell saying "We want  
24 to raise prices", but if we can just pick it up four  
25 paragraphs down on the first page:

1           "For the past year DAF have supported our contract  
2 terms and supplied Royal Mail under the pressures of  
3 rising costs of raw materials and the fallen Euro rate  
4 of exchange; the predominance of our products being  
5 sourced from mainland Europe. With no signs of an  
6 economic recovery in the forthcoming year DAF are now  
7 simply unable to additionally sustain the increase in  
8 the terms from our third party suppliers."

9           So there is a reference to certain items from  
10 Cartwright's that are being referred to.

11           If we go over the page {I2/101/2}, picking it up in  
12 the second paragraph:

13           "The need for a new supplier to replace TVAC ..."

14           Do you remember who TVAC were?

15       A. I understand TVAC were third party supplier to DAF that  
16 no longer continued to supply them with products in the  
17 contract, and DAF needed to obtain a new supplier.

18       Q. That is right.

19           "... for the completion of motive units to  
20 Royal Mail specifications has given rise to a £980  
21 increase over 2008 costs. Although this increase is  
22 unquestionably significant it is the result of years of  
23 fixed prices with TVAC, a point one could now argue has  
24 contributed to their current problems."

25           So the suggestion by Mr Shadwell is, by pushing down

1 on their components supplier, that actually that has  
2 contributed to them going out of business. I think that  
3 is what is being said. Is that how you understood it?

4 A. It is -- I understood the letter was --

5 Q. No, just that sentence.

6 A. Whether it is solely attributable to Royal Mail and the  
7 volume of work that Royal Mail gave DAF for supply of  
8 TVAC is open to question because it is not attributed  
9 purely to Royal Mail.

10 Q. No, I think that is perfectly fair.

11 "Another point to recall; should the majority of  
12 Royal Mail 2009 motive unit requirements be built and  
13 registered before 1st October 2009 then they will all be  
14 eligible for Reduced Pollution Certificates as advanced  
15 Euro 5 introductions."

16 That has a £500 reduction per annum in the road fund  
17 duty, "also assisting in re-saleability". He is saying  
18 that various commitments have been made that are  
19 essentially to the financial benefit of Royal Mail. You  
20 understand that?

21 A. [Nods]

22 Q. Yes. In essence what he is saying is "We need to  
23 increase the overall cost of our trucks".

24 If we go down to the bottom of the third page  
25 {I2/101/3}:

1            "To summarise my letter, DAF are not increasing the  
2            contracted costs of our chassis products to Royal Mail,  
3            but clearly we are requesting to pass on the recovery of  
4            costs that are being applied to us as non-negotiable by  
5            our third part suppliers.

6            "I look forward to expanding upon my letter, perhaps  
7            at or after our next liaison meeting at Chesterfield."

8            So you remember this letter --

9            A. Yes.

10          Q. -- and the request from him to pass on price increases.

11            Now, were you aware just how much DAF was struggling  
12            in terms of their margins at this time?

13          A. Not at that time, no.

14          Q. So you were not aware of the fact that they were in fact  
15            suffering negative margins in relation to the trucks  
16            they were supplying to Royal Mail?

17          A. No.

18          Q. In fact significantly negative margins?

19          A. No.

20          Q. No.

21          THE CHAIRMAN: Mr Beard, can I just ask, before you started  
22            this series of questions in relation to the first  
23            extension you said there was a price reduction; is that  
24            right? There was no actual reduction according to that  
25            contract extension. I do not know whether you were

1 going to show us something else that confirmed that.

2 MR BEARD: If we go to {I2/194}, I skated through it. It is  
3 only a small reduction. You will see there, this is  
4 amendment advice number 1 in relation to TC02011A, these  
5 are small reductions, which is why I did not --

6 THE CHAIRMAN: You showed us amendment advice 3.

7 MR BEARD: 3, and this is amendment advice 1, and I was just  
8 putting to Mr Giles whether he remembered it, and  
9 I think he did not remember which is why I moved on.

10 THE CHAIRMAN: Okay, thank you.

11 MR BEARD: But that is it.

12 THE CHAIRMAN: Yes, thank you.

13 MR BEARD: Sorry, Mr Giles, you can see that. I do not  
14 think --

15 A. Yes.

16 Q. -- you remember that document. No. Thank you.

17 Now, you say you did not know about the negative  
18 margins and the extent of the negative margins that DAF  
19 were facing, but you understood that DAF were in  
20 a pretty desperate position so far as Royal Mail were  
21 concerned, did you not?

22 A. I did not realise DAF were in such a desperate position  
23 in respect of Royal Mail. I read the letter and DAF  
24 were requesting a price increase on the trucks that they  
25 sold, but within the letter it does not cover the



1 predicament that DAF are under, and the -- you know, the  
2 negative margins that they are making on producing  
3 vehicles for Royal Mail.

4 Q. I am not just referring to the letter that I have taken  
5 you to; I am referring to the situation generally at  
6 that time, Mr Giles. Did you understand that DAF were  
7 in quite a desperate position in relation to Royal Mail?

8 A. Not in relation to Royal Mail, no.

9 Q. No. So were you aware of the fact that there was  
10 a meeting between the managing director of DAF, Leyland  
11 and Lindsay Hoyle MP in February 2009?

12 A. No.

13 Q. So if we could just go to {I2/126/1}, please. So this  
14 is an internal DAF email, so you are not going to have  
15 seen this, but it is from a Mr Jim Sumner, who is the  
16 managing director at Leyland, February 2009. Do you see  
17 it? It is to Ray Ashworth:

18 "I met with Lindsay Hoyle MP this morning, who as  
19 you know is a member of the government body who oversee  
20 the running of Royal Mail."

21 Do you know what that body was that might be  
22 referred to?

23 A. No.

24 Q. No, so you are not aware that Lindsay Hoyle was at the  
25 time in the departmental select committee for the

1 department for business?

2 A. No.

3 Q. "Following our discussion, I have explained to him the  
4 need for an urgent review of the current contract  
5 following the significant movement in the [pounds/euro]  
6 since pricing was set. Suffice to [say] I left him  
7 under no illusions that if action isn't taken on  
8 improving pricing that this will lead us to  
9 reconsidering future business!"

10 So you are saying at the time you had no awareness  
11 of these very high-level contacts that were being  
12 made --

13 A. No.

14 Q. -- and protestations by DAF and Leyland?

15 A. No.

16 Q. It is quite a desperate step to be taking, is it not,  
17 Mr Giles? Actually going to the public body --

18 THE CHAIRMAN: Is that for him to comment on?

19 MR BEARD: I will leave it, sir.

20 What is correct is that, notwithstanding the  
21 position, you refused in December 2008 to allow DAF any  
22 increase to its prices. That is correct, is it not?

23 A. Yes, it is.

24 Q. Can we just go to that document? {I1/356/1}, please.

25 Tab 47 in your bundle. If we just go to the second

1 page, you will be familiar with it but so the tribunal  
2 knows this is a letter from you.

3 A. It is.

4 Q. It is to Mr Shadwell, if we go back to the previous  
5 page, please {I1/356/1}, thank you. This is essentially  
6 the response to the letter that you previously received,  
7 correct?

8 A. It is, correct.

9 Q. If we just look at that letter:

10 "With reference to your recent letter and email  
11 outlining your request for a price increase whilst in  
12 a fixed price contract ..."

13 So you are emphasising there "fixed price".

14 "... I have now reviewed and discussed the proposal  
15 within Royal Mail.

16 "The request to increase the cost of any future  
17 orders for tractor units by £495 ..."

18 So this is rejecting the 980 that was suggested,  
19 referring to a discounted value.

20 "... by £495 ... based upon the need to replace TVAC  
21 with a new supplier is rejected. DAF have contractually  
22 agreed to supply tractor units at the agreed price for a  
23 period of two years."

24 So you are standing firm on the contract pricing  
25 here; is that right?

1 A. Correct.

2 Q. "The current contract does not specify that TVAC are to  
3 be used for the completion of tractor units nor does it  
4 contract separately for this element of the build."

5 In other words, tough on you, DAF, if one of your  
6 suppliers goes down, you contracted to bear that risk.  
7 Is that broadly what is being said here, albeit in much  
8 more polite terms, Mr Giles?

9 A. Yes.

10 Q. "A request was made to increase costs by £50 for the off  
11 site tachograph calibration. Within the contract a zero  
12 cost was offered and accepted ... therefore your request  
13 to increase the cost during a fixed price [contract] is  
14 rejected."

15 Again, in relation to tachographs, the additional  
16 costs, DAF needs to bear them?

17 A. Correct.

18 Q. "The purchased price for each vehicle may be reviewed  
19 and amended by Royal Mail on 31/12/09 and each  
20 anniversary thereof ..."

21 So you are making it clear that it is in your gift  
22 as to whether or not to accede to any uplift in pricing,  
23 correct?

24 A. Correct.

25 Q. Then:

1            "A further request was made to increase the cost of  
2            all rigid vehicles 7.5 tonne and above by varying levels  
3            based upon 'non negotiable' price increases from DAF's  
4            selected suppliers ... The proposal to increase the  
5            costs is also rejected based upon our fixed price  
6            contractual agreement."

7            So this was another very clear no?

8            A. Correct.

9            Q. Then you:

10           " ... offer to support DAF with any third party  
11           negotiations; however the business cannot afford to  
12           incur any additional cost at such a critical time for  
13           our customers."

14           So DAF were in a dire position. They came to you  
15           with a series of suggestions justifying price increases  
16           under this fixed price contract, but you held the whip  
17           hand and just said no to all of them, correct?

18           A. Correct. With the offer of assistance with third party  
19           negotiations.

20           Q. Now, there was a suggestion at this time that DAF might  
21           actually stop supplying Royal Mail at all. Do you  
22           recall that?

23           A. Vaguely. It was intimated that DAF, I believe, looked  
24           to stop supplying Royal Mail with its trucks.

25           Q. Could we go to {I2/142/1}, please. If we could just go

1 down the page, please. Thank you. "Target(s)". So  
2 this was a document, "Situation Target Proposal". it was  
3 20 January 2009, and the targets:

4 "1. To challenge DAF on the proposed specification  
5 changes as no benefit to Royal Mail has been offered.

6 "2. To investigate the possibility of change with  
7 key stakeholders."

8 It is clear from January 2009:

9 "DAF have indicated (verbally) that it maybe cheaper  
10 to progress legally by refusing to build at the current  
11 pricing structure within the contract."

12 Was that what you recalled?

13 A. Yes, if it was -- yes, it is 2009, it was indicated  
14 verbally, so it was not put in writing to us.

15 Q. But you recall being told this?

16 A. Yes.

17 Q. Your name is on this document, so...?

18 A. Yes.

19 Q. So the reaction is:

20 "Options have been explored with MAN and Mercedes,  
21 no price (or cost) reductions for the order were  
22 offered."

23 So you were taking seriously the concern that DAF  
24 were in such dire straits they may no longer supply you,  
25 and you had gone out and made further enquiries of MAN

- 1           and Mercedes. Is that what we understand from this?
- 2           A. I did not know at the time that DAF were in such dire  
3           consequences because that did not come across in the  
4           letter from Andy Shadwell, so the pricing rejected. But  
5           we wanted to explore the market with MAN and Mercedes to  
6           understand what their product offering would be.
- 7           Q. In the face of the concern that DAF would not be  
8           supplying you at all because they could not afford to,  
9           correct?
- 10          A. Yes.
- 11          Q. You keep referring back to the letter, and you have  
12          indicated you did not know about the exchange with  
13          Lindsay Hoyle, but was there no other communication  
14          within Royal Mail as to the concerns that were being  
15          raised by DAF about the pricing under these contracts,  
16          that you recall?
- 17          A. The information on the situation was shared by the --  
18          with the key stakeholders on the positioning and ...
- 19          Q. So was it DAF speaking to you where they indicated that  
20          they would be refusing, or was this a message you  
21          understood through others?
- 22          A. I cannot recall whether it was DAF speaking to me or  
23          through others.
- 24          Q. As it was, DAF actually did continue to supply you.  
25          That is the consequence of actually what happened; is

- 1           that right?
- 2           A. I understand we continued to buy DAF Trucks. I do not  
3           know the dates at which we bought each model after the  
4           letter was written.
- 5           Q. I will not take you back to the sourcing council paper  
6           from earlier where Royal Mail was recognising it was  
7           getting a good deal from DAF under TC02011. That was  
8           the 2009 sourcing paper. Do you remember that?
- 9           A. [No verbal response]
- 10          Q. Yes. Now, in your second witness statement, just at  
11          paragraph 6.10, you explain that in 2010 Royal Mail was  
12          pursuing cost-cutting initiatives with its suppliers and  
13          that extended to truck costs; correct?
- 14          A. I am aware of the approach to all suppliers to  
15          Royal Mail around 2010 to reduce -- for support to  
16          reduce Royal Mail costs.
- 17          Q. In fact, Royal Mail had been involved in fairly  
18          extensive cost-cutting exercises throughout the period  
19          we are talking about, from 2000 through to 2010; is that  
20          fair?
- 21          A. That is fair.
- 22          Q. Could we go to {I1/357.1/1}? This is an email from  
23          Mick Goodwin, 12 August 2004, to Andy Shadwell.  
24          Actually I am just going to take you backwards, if  
25          I may, to {I1/356.2}, which in your hard copy is tab 42.



1           The only reason I am doing this is this is the email  
2           from Andy Shadwell to Mick Goodwin. Do you see that?

3           A. Yes.

4           Q. Yes. The reason I am just directing you to that is  
5           because this was the email from Andy Shadwell to  
6           Mick Goodwin, 7 August 2004, and in it Mr Shadwell is  
7           asking for price increases. You understand that?

8           A. [Nods]

9           Q. If you go to below "Next":

10                    "For our base chassis prices I am requesting a price  
11                   increase that equates to 2% for the 15/18t and 4x2  
12                   tractor and 1% for the 6x2 tractor."

13                    Do you see that?

14           A. Yes.

15           Q. "This increase is a reflection of material costs that  
16           have increased since this contract began in particular  
17           steel has moved at times to beyond 20%."

18                    Then there are various other changes on chassis  
19           prices that are being put forward. Do you see that?

20           A. [Nods]

21           Q. So if we could go back now to the document at {I1/357},  
22           tab 50 if you want the full version. 357.1. I am so  
23           sorry, I gave the wrong document reference.

24                    {I1/357.1/1}. I gave you the right file reference, it  
25           is 50. Sorry, the reason I was just taking you back to

1 the previous letter is because what Mick Goodwin has  
2 done is actually taken bits of Andy Shadwell's email  
3 that I have just shown you, turned it into red and then  
4 replied to it.

5 A. Okay.

6 Q. Okay?

7 A. Yes.

8 Q. So I am just explaining what was going on. So if we  
9 could just go down the page, you will see in the middle  
10 of the page on the screen, it says "AS" in red:

11 "For our base chassis prices I am requesting a price  
12 increase that equates to 2% for the 15/18t ... and 1%  
13 for the 6x2 tractor."

14 So he has just cut and pasted but turned into red  
15 the bit I had taken you to.

16 A. Yes.

17 Q. Do you see that, Mr Giles?

18 A. Yes.

19 Q. He is also picking up:

20 "(b) I am not requesting any increases in chassis  
21 option prices unless there has been a specific  
22 specification change ..."

23 Can you tell me what a suzie boom is, please?

24 A. My knowledge of the specification does not go that far.

25 Q. It is all right. We will look it up. It was just as

1 I was reading it I realised I did not know.

2 THE CHAIRMAN: Have you established with Mr Giles whether he  
3 saw this?

4 MR BEARD: Not yet, no. I have not. I am just asking him  
5 some questions about the materials here.

6 So this is Mick Goodwin. You are not copied on  
7 these emails but Mr Goodwin is saying:

8 "We fully understand that there has been volatility  
9 in materials prices. However, we have awarded contracts  
10 recently on the basis of suppliers holding prices that  
11 they quoted many months ago. Furthermore, you are the  
12 last supplier on my list to talk to about driving costs  
13 down. We have been tasked as I am sure [you] know to  
14 talk to ALL suppliers to help us achieve our objectives.  
15 All have shown movement down or scrapped proposed  
16 increases. Obviously I would like you to reconsider for  
17 this year. I fear that the success of the 7.5 tonne  
18 truck tender exercise may influence the decision on  
19 whether to revisit the market."

20 Then:

21 "(b) Excellent. That means I don't have to say no  
22 ... again."

23 Do you recall any of these exchanges between  
24 Mr Goodwin and Mr Shadwell?

25 A. No, I do not recall.

1 Q. But you understand that what Mr Goodwin was saying was  
2 that none of those proposed price increases would be  
3 acceptable?

4 A. Yes, that is (inaudible).

5 Q. That includes when specific reference had been made to  
6 material costs increase, correct?

7 A. Correct.

8 THE CHAIRMAN: Just so we have the chronology right, this is  
9 just after the 2004 contract was entered into?

10 MR BEARD: Yes. Yes, it is the annual review of the TC02012  
11 contract that is being talked about here. So actually  
12 it is a slightly different contract but it had the same  
13 terms in it.

14 THE CHAIRMAN: You mean it relates to different trucks?

15 MR BEARD: Yes, because TC02011 was the lighter trucks and  
16 TC02012 was the heavier trucks. I do not think there is  
17 any material difference in the contractual terms in  
18 relation to --

19 THE CHAIRMAN: So it was an anniversary of that contract  
20 that was being reviewed?

21 MR BEARD: Yes, exactly.

22 So I am going to just move on to a slightly  
23 different topic now from those contractual discussions.  
24 I would like to go to a different contract, which is  
25 VEH397016 which was a contract that ran between 1998 and

1           2001. It concerned the purchase of LF 55.180s. So they  
2           are slightly bigger trucks than the LF 45s. That is  
3           correct, is it not?

4           A. I believe so, yes.

5           Q. Yes. I am not going to ask you just to remember the  
6           contract off the contract number so let us go to  
7           {I1/160.1}, please, and it should be at tab 51 in your  
8           bundle. This is actually amendment 7 to this contract  
9           so it has been running for a little while, but you are  
10          listed as the purchasing officer on the front of it. Do  
11          you remember?

12          A. No. I do not, I am sorry.

13          Q. Okay.

14          A. But if I am listed, please ...

15          Q. No, there is a limit as to how far I can go with this  
16          but let us pick up one or two points. You have  
17          perfectly fairly said you cannot remember.

18          THE CHAIRMAN: It is 21 years ago.

19          MR BEARD: I understand, yes.

20                 We have done our best to try and identify things  
21                 where you were mentioned, Mr Giles, so that we could ask  
22                 you questions about it, as you can tell. Your name does  
23                 not necessarily come up enormously in the disclosure and  
24                 therefore we have to test whether or not you can  
25                 remember these things.

- 1 A. Right.
- 2 Q. But understood. Let us just go to page 6, if we may, in  
3 this {I1/160.1/6}. You may not be able to assist. So  
4 at the top of the page it says:
- 5 "The prices that follow will remain firm for all  
6 orders placed during the periods 1 April 2001 to  
7 31 July 2001."
- 8 Given you do not remember the document, I am not  
9 going to ask you about it. Just note the chassis cab  
10 price, LF FA55.180, Euro III, £29,213. This is  
11 a standard layout to a specification?
- 12 A. Yes.
- 13 Q. So you understand that.
- 14 If we could then go to {I1/143.2/1}, please. It is  
15 a DAF letter. If we could go down to the bottom of the  
16 next page, {I1/143.2/2}, it is a letter from Mr Shadwell  
17 and it is to Mrs C Hookings, if we can just go back to  
18 the first page. Do you recall who she was? Christine  
19 Hookings?
- 20 A. Vaguely.
- 21 Q. Right. So you do not recall anything about DAF agreeing  
22 to hold the prices of current Euro 2 chassis at around  
23 that time, which is what is referred to in the third  
24 paragraph? You do not recall anything to do with that?
- 25 A. No.

1 Q. No. You do not recall the discussion about the level of  
2 increase in price in moving to the new Euro 3 emissions  
3 standard trucks, which was at that point said to be  
4 £1,750? You do not remember that?

5 I am sorry, you do not remember?

6 A. No.

7 Q. The reason I ask is because that is the price increase  
8 that you signed off as the purchasing officer in the  
9 amendment 7.

10 A. Okay.

11 Q. That was the difference in price, but since you do not  
12 recall that, I can understand you would not recall these  
13 changes.

14 In your second witness statement at 5.10, you say  
15 you do not recall any instances of prices offered by  
16 other manufacturers being provided to DAF in the course  
17 of negotiations {D/9/7}. I just want to check whether  
18 or not you remember this or had seen this email,  
19 {I1/117.2}, which is at tab 52 in this bundle. I am  
20 sorry, you will not have seen this email, I apologise.  
21 It is an internal discussion. But what I just want to  
22 check with you is whether or not you were aware of these  
23 discussions. So this is back in July 2000 and this is  
24 Mr Shadwell to Mr Ashworth and Mr McDonagh:

25 "For Royal Mail we offered Euro 2 current model at

1 current price ... We also said [plus] £2,300 for new  
2 model with Euro 3 and ABS ..."

3 So they were initially putting forward a £2,300  
4 increase in relation to Euro 3. Then there is  
5 a reference to "IFT". Do you know what "IFT" might mean  
6 in those circumstances?

7 A. No, sorry.

8 Q. I think it is Iveco Ford trucks.

9 A. Okay.

10 Q. I am not sure you are going to be able to assist in  
11 relation to this, but this is an example of pricing  
12 information having been provided to DAF in the course of  
13 a tendering exercise in relation to these issues.

14 MR WARD: Can you make clear where that is appearing on the  
15 document?

16 MR BEARD: We understand that this is the circumstances in  
17 which this material has been provided. It is obviously  
18 something that can be the subject of cross-examination  
19 of Mr Ashworth in due course, but I wanted to know  
20 whether you were familiar with these discussions --

21 A. No.

22 Q. -- given the points you had raised in your statement.

23 THE CHAIRMAN: Sorry, just so I understand the suggestion,  
24 you are saying that that second paragraph came from  
25 Royal Mail, someone in Royal Mail?



1 MR BEARD: Yes.

2 THE CHAIRMAN: Is that right?

3 MR BEARD: Yes. We understand that is the position. So  
4 this is one of the situations where information is being  
5 communicated.

6 THE CHAIRMAN: Yes, understood.

7 MR BEARD: One can see further down, so I am not going to  
8 ask Mr Giles any further questions:

9 "For interest MAN and Renault are the other two  
10 manufacturers in contention."

11 Again, it is matters to be asked of Mr Ashworth but  
12 it appears that this is plainly to do with the tender  
13 exercise that Royal Mail has been engaged with.

14 I have further questions in relation to that but  
15 given your answers there is a limit I think to what  
16 I can ask about those matters.

17 Could we move on to document {I1/467.1/1}, please?  
18 Now, this is a note of a meeting on 2 March 2006. You  
19 will see there that the attendees did include you at the  
20 top.

21 A. Sorry?

22 Q. I am so sorry, it is 56 in your hard copy bundle.

23 A. Sorry, there is a glare on the screen from the window,  
24 that is why I --

25 MR BEARD: I see. Would it be possible to drop the blinds?

1 THE USHER: Yes, I can.

2 MR BEARD: Let us pause and let us just drop the blinds and  
3 then you will not get glare behind you. If that is okay  
4 with the tribunal. (Pause)  
5 If you let us know when it stops glaring?  
6 A. The window is still on the screen.  
7 Q. We do not want to go all the way to the bottom and  
8 descend into darkness.  
9 A. That is great, thank you.  
10 Q. Thank you very much, that is great.  
11 Okay, you should be able to see it.  
12 Can you see on the screen "Our business", so this is  
13 a Royal Mail document:  
14 "Our business:  
15 "Purchasing: Simon Giles ..."  
16 A. Yes.  
17 Q. This was attended by individuals from DAF, and if we go  
18 down to the second page {I1/467.1/2}, we see about  
19 halfway down it says "AP2"?  
20 A. Hmm-hmm.  
21 Q. "AE review SG on cost implications of Euro 4, whether  
22 theres an opportunity to go out to market. What will be  
23 the capital cost increase. NP/MG to benchmark prices  
24 with other suppliers re. Urea, Euro 3/4 SG -- asked of  
25 effect on residuals with use of Urea. AS -- residuals

1 expected to increase."

2 So "AE" was Alan Ellingham, do you recall that?

3 A. Yes, correct.

4 Q. So you and he were discussing the cost implications of  
5 moving to the Euro 4 emissions standard for trucks; is  
6 that correct?

7 A. The minutes suggest so, yes.

8 Q. Do you remember this?

9 A. From 2006, not in any great detail.

10 Q. Right. Do you recall that you and Mr Ellingham were  
11 debating whether or not Royal Mail should go out for  
12 a tender on Euro 4 vehicles or stick with DAF? Do you  
13 remember that?

14 A. No, not ...

15 Q. Just help me, when it says "NP/MG to benchmark prices  
16 with other suppliers", is that the possibility of  
17 Mr Peat and Mr Goodwin gathering market intelligence  
18 about Euro 4 offers from DAF's competitors?

19 A. Correct.

20 Q. Yes. So that would be information about the technology  
21 that they were using and the prices they would be  
22 offering; is that correct?

23 A. Yes.

24 Q. Yes. Your question about Urea related to the fact that  
25 different manufacturers were actually offering different

1 technologies for Euro 4; is that correct? Do you  
2 remember that?

3 A. Yes.

4 Q. Just to remind you, I imagine this will be familiar, can  
5 we go to {I1/499.2/1}, please? This is in your hard  
6 copy bundle at 25, I think. So this is August 16, 2007.  
7 It is a Royal Mail Group "Tractor sourcing update"  
8 document for Ninian Wilson. Who is Ninian Wilson?

9 A. Ninian Wilson held two roles within Royal Mail. He was  
10 the group procurement director and later on he was the  
11 chief operating officer, I understand him to be.

12 Q. He was the chief operating officer?

13 A. He was the procurement director first off, but I am not  
14 sure with Ninian's timeline --

15 Q. No, no, sorry, understood.

16 A. I know he held two roles but I am not sure at that time  
17 which one.

18 Q. Understood. Then tony Shaw we know about.  
19 Richard Boyce and Fergus Alexander?

20 A. Richard Boyce worked within the procurement team and  
21 headed up procurement, or was part of that first line  
22 into Ninian. Fergus Alexander worked within Royal Mail  
23 fleet.

24 Q. Royal Mail fleet?

25 A. Fleet or vehicles services.

1 Q. Thank you. So this is a sourcing update. It is around  
2 the time of the move to Euro 4. If we could just go to  
3 page 6 {I1/499.2/6}, do you recall this acronym battle  
4 between "EGR" and "SCR" at all, Mr Giles?

5 A. I am aware of the debate between the two technologies at  
6 the time, yes.

7 Q. So what we see here is a slide articulating how to meet  
8 Euro 4 plus emissions standards, and on the left-hand  
9 side we have "EGR", so this is engine gas recirculation.  
10 Do you recall that?

11 A. Yes.

12 Q. It says it was utilised by Scania and MAN. So this  
13 slide deck is considering that technology. Have you  
14 seen this slide before?

15 A. I cannot recall it but the information on it seems  
16 familiar.

17 Q. It is familiar, right. Then "SCR" is selective catalyst  
18 reduction and it is utilised by the other European  
19 manufacturers. So Scania and MAN were going down one  
20 technological route?

21 A. Yes.

22 Q. The others were going down this SCR route. The third  
23 bullet says:

24 "Requires an additive to the exhaust mix, [called]  
25 AdBlue."

1 A. Correct.

2 Q. When you were referring to Urea in the previous  
3 document, that is actually to AdBlue. That is correct,  
4 is it not?

5 A. Correct, yes.

6 Q. One of the salient points is bullet 4:

7 "To meet Euro 4, Royal Mail will need to specify  
8 trucks with an additional AdBlue tank on each Euro 4  
9 tractor and deployment of AdBlue storage tanks  
10 throughout the garage network. Tanks replenished during  
11 routine maintenance."

12 There was an expectation that if you went with  
13 manufacturers using SCR, you would need more  
14 infrastructure to deal with the AdBlue additive systems?

15 A. Correct.

16 Q. Thank you.

17 So if we can go now back to the meeting note we were  
18 in, which is at {I1/467.1}, please. That is 56 again in  
19 your bundle. If we could just go back to page 2 where  
20 we were on that comment {I1/467.1/2}. You said -- we  
21 have dealt with the "NP/MG to benchmark prices with  
22 other suppliers re. Urea ... Euro 3/4 SG -- asked of  
23 effect on residuals with use of Urea ..."

24 What you are asking there, do you recall asking  
25 about whether or not a particular technological solution

1           might have an impact on the residual values of trucks?

2           A. That would have been part of the question that was  
3           raised, yes, to understand if the EGR solution to meet  
4           the emissions was going to be more attractive to the  
5           market upon sale or vice versa.

6           Q. So you can see there noted AS, Andy Shadwell, expected  
7           residuals to increase.

8                        So all else being equal, that would mean that  
9           Royal Mail would be more likely to pay more upfront for  
10          Euro 4 trucks with SCR than EGR if the long-term  
11          residuals would be better, correct?

12          A. I mean, Andy's note says residuals are expected to  
13          increase. That -- is that -- he has not got much  
14          context behind it, whether that is residuals expected to  
15          increase across all the products or just SCR.

16          Q. Understood. So you are saying that if Andy Shadwell was  
17          talking about movements to Euro 4 trucks generally, then  
18          that would be a general incentive to moving to Euro 4  
19          trucks and purchasing those, correct?

20          A. It is a comment that is -- forecast comment from  
21          Andy Shadwell in that meeting. So there is no testing  
22          of that market to understand if the forecasts are going  
23          to go up for either EGR or SCR.

24          Q. Now, I have completely understood that it is not tested  
25          there. I am just asking, if the residuals for

1 a particular truck are going to be higher, then that  
2 means that you are going to be more willing at the  
3 outset to pay more for that truck in principle than  
4 a truck where the residuals would be lower, correct?

5 A. We would not necessarily want to pay more for the truck.  
6 That would be part of a separate negotiation, and the  
7 residual values as part of that truck is what we sell  
8 the vehicle for at the end of its operational life.

9 Q. But, Mr Giles, the residual value is essentially -- or  
10 the residual value is the store of value that you have  
11 in relation to an asset. If you have two assets, one of  
12 which you are told will have higher residual value, then  
13 there will be an incentive for you to pay slightly more  
14 for that asset that has a higher residual value because  
15 you will have a higher store of value over time; is that  
16 correct?

17 A. Possibly, if it is round the depreciation. If the  
18 residual value increases more than the capital price,  
19 you reduce the depreciation. It depends on what level  
20 of movement is on which area.

21 Q. Understood. So if you do not change your depreciation  
22 curve in relation to either of the two assets, then the  
23 one that has higher residual value has higher initial  
24 value to you; is that correct?

25 A. That would mean that -- yes, it would be beneficial to



1 us.

2 Q. Yes, thank you.

3 Now, after the meeting, Mr Goodwin emailed  
4 Mr Shadwell to ask him to confirm DAF's Euro 4 price  
5 increases. Could we go to {I1/446.1/1}, please? This  
6 is in tab 59 in your bundle. Do you recall seeing this  
7 chain of emails? You are not in copy on it.

8 A. No.

9 Q. You do not. So if we can just scroll down the page;  
10 further down, if we may. So where Mr Shadwell in that  
11 second paragraph refers to providing material "from our  
12 loyal customer intelligence", you do not recall seeing  
13 any of that material?

14 A. No.

15 Q. If we just go down slightly further, to page 3  
16 {I1/446.1/3}, again you are not copied on this email but  
17 Mr Goodwin here says:

18 "We need [DAF] to nail your 'price flag to mast of  
19 opportunity' on the issue of the cost implications of  
20 Euro 4 on the 7.5 tonne and Motive Units.

21 "Dependent on the outcome this may or may not  
22 ferment the need to tender these products."

23 Do you remember at that time, given your involvement  
24 in the prior meeting, that what was being said to DAF  
25 was, "Look, you need to come up with a good price,

1 otherwise we are going out to tender on Euro 4"?

2 A. I cannot recall the email, but it is certainly -- you  
3 know, if dependent on what offer was going to come back,  
4 may determine what the next steps were going to be from  
5 Royal Mail.

6 Q. Okay. If we can go back to the top of page 2  
7 {I1/446.1/2}, this is back in the response from  
8 Andy Shadwell to that email:

9 "If your memory and meeting minutes can serve here  
10 you may have a record that 9 months ago I indicated  
11 LF 45 to be £2,500 and CF FT to be around £4,500, what  
12 has happened since is market pressure, again as  
13 I predicted, has been applied and the DAF latest and  
14 lowest nett cost have evolved."

15 Do you recall the process of negotiation and  
16 interaction in relation to these Euro 4 costs at all?

17 A. No.

18 Q. If you just go down to the second paragraph on that  
19 page, it says:

20 "At our last meeting VS Purchasing were actioned  
21 with benchmarking competitive manufacturers Euro 4  
22 costs, I appreciate that this might be a difficult task,  
23 if it is of any assistance we too are benchmarking based  
24 upon the advice from our loyal customer intelligence."

25 When he refers to:

1            "At our last meeting VS Purchasing were actioned  
2            with benchmarking competitive manufacturers", is that  
3            a reference to Mr Peat and Mr Goodwin being engaged in  
4            such benchmarking?

5            A. It could be, yes.

6            Q. VS purchasing is --

7            A. Is procurement.

8            Q. Yes, thank you. You do not know to what extent the  
9            information -- you have not seen that information, you  
10           do not know how it was used within Royal Mail?

11           A. (Shakes head).

12           Q. No.

13           Now, Mr Ashworth recalls that Royal Mail trialled  
14           a range of Euro 4 trucks. Is that your recollection?

15           A. I cannot recall the trial results and which  
16           manufacturers we trialled for Euro 4.

17           Q. Can we go to {I1/499.2/14}, please? So this is back in  
18           the Ninian Wilson slide deck. It is just further on  
19           from the page I took you to earlier. What you see there  
20           is an outline of the Royal Mail SCR versus EGR fuel and  
21           vehicle testing. I am not going to ask you detailed  
22           questions about it. Were you aware of that at the time  
23           being undertaken?

24           A. No.

25           Q. If you just go over the page {I1/499.2/15}, you will

1           see, for example down at the bottom, just above the  
2           yellow, he talks about the tractor test units being  
3           various of the manufacturers. You do not recall that  
4           being undertaken?

5           A. No.

6           THE CHAIRMAN: Can I ask when you were obliged to move to  
7           Euro 4? Can you remember?

8           MR BEARD: Yes -- well, you can certainly of course ask  
9           Mr Giles, or you can ask me. Do you --

10          A. No.

11          MR BEARD: Legal deadline for new truck registrations was  
12          actually October 2006.

13          THE CHAIRMAN: Right.

14          MR BEARD: That was in fact the relevant deadline, but there  
15          were still debates and testing about how far they would  
16          move and how fast they would move and what they wanted  
17          to do in relation to these matters.

18                 When you were considering the Euro 4 purchase -- you  
19          may not be able to assist given your answers in relation  
20          to these slides, but you were actually not just thinking  
21          about Euro 4, but you were also thinking about how the  
22          technology might work for Euro 5 at the same time; is  
23          that correct?

24          A. I do not know.

25          Q. Right. Could we go to {I1/463.4}, please? Now, this is

1 an email on 24 November 2006, Mr Shaw to Mr Peat and  
2 Mr Goodwin. So it is internal Royal Mail. Do you see  
3 that? I am so sorry, that is not correct. I have  
4 misrepresented that. It is from Andy Shadwell, you can  
5 see at the bottom, it is just the "From" has been  
6 deleted. But it is to Tony Shaw, copied to Mr Peat and  
7 Mr Goodwin.

8 Were you aware of this email?

9 A. I was not aware of the email, but...

10 Q. So it says:

11 "Tony [Shaw] ..."

12 A. Yes.

13 Q. Who we have referred to previously.

14 "In speaking to Simon G a moment ago ..."

15 So that would be you, presumably?

16 A. Yes.

17 Q. "... I understand that Nigel will not be around tomorrow  
18 for the discussion meeting I have asked for. I am  
19 seriously hoping that you will be available for a short  
20 time tomorrow to understand the serious position I feel  
21 we are in?

22 "I fully appreciate that the world of Group  
23 Procurement is presently in turmoil, my fear is that you  
24 may not have the best value contracts to fall back on  
25 that GP clearly believe they have."

1           Do you understand what Mr Shadwell might have been  
2           referring to about group procurement being in turmoil at  
3           that time?

4           A. No.

5           Q. No, understood.

6                     "In the hope that I have caught your interest I have  
7           summarised the contractual position in a brief agenda  
8           for our meeting tomorrow. Please be assured my sole  
9           interest here is in the spirit of the relationship  
10          promoted at The Supplier Awards by Ninian Wilson ..."

11          Do you know what that reference to the supplier  
12          awards was?

13          A. I do not know specific to the email he is referring to,  
14          but I do know that Royal Mail did have supplier awards  
15          ceremonies.

16          Q. Ninian Wilson was the person we referred to previously,  
17          senior individual?

18          A. Correct.

19          Q. So he would have been potentially handing out those  
20          supplier awards?

21          A. He could be, yes.

22          Q. You do not recall whether or not DAF had won supplier  
23          awards?

24          A. No.

25          Q. So you do not recall, I think, from around this time,

1           whether or not the concern that Mr Shadwell and DAF had  
2           was that you were going to go out further tenders on  
3           Euro 4, in relation to Euro 4 trucks because you were  
4           not persuaded that DAF's offer was good enough, so far  
5           as you were concerned. You do not recall that?

6           A. No.

7           Q. So if we could just go to {I1/463.5/1}, this was  
8           actually an attachment to that email. It is tab 63 in  
9           your hard copy bundle. Do you have that?

10          A. Yes.

11          Q. It is "DAF - Royal Mail, Contractually where are we  
12          now". It is referring to contract TC02011 in relation  
13          to 7.5, and then contract TC02012 in relation to the  
14          18 tonnes. So those were the two contracts that I was  
15          referring to earlier.

16                 "DAF Understanding prior to 16/11/06", 12-month  
17          extension on 7.5 but going to tender on the heavier  
18          trucks. Then the proposed price increases for Euro 4  
19          being set out. But it is a 12-month extension, was  
20          DAF's understanding that is being said here. You do not  
21          recall seeing this?

22          A. I do not recall seeing this particular document.

23          Q. No. So if we just scroll down the page, you do not  
24          recall whether or not Royal Mail's position as at  
25          16 November was only offering DAF a three-month contract

1 extension on 7.5 and then going to full tender on  
2 18 tonnes?

3 A. [Shakes head]

4 Q. No. If we can go on two pages in this to page 3  
5 {I1/463.5/3}, I just want to pick up mid -- if we can  
6 just scroll down slightly. I am sorry, would you mind  
7 just going back up again? I ought to give the witness  
8 context in relation to it.

9 I know you have said you have not seen this, but  
10 what is indicated in this table is:

11 "DAF Proposal 24/11/06 - reconsider 7.5t Contract  
12 term and, withdraw from tender process on 18t/Motive  
13 unit tender and AdBlue tender and consider the  
14 DAF Trucks combined offer."

15 So you cannot comment, you have not seen this  
16 before, but what is being said is that this is a DAF  
17 proposal for a unified --

18 A. Yes.

19 Q. -- scheme for both, with a longer extension for the  
20 contracts. But if we could just scroll down, you will  
21 see on the screen, about five rows down:

22 "DAF pay for AdBlue infrastructure equipment supply  
23 (exc ground works)."

24 Do you see that row?

25 A. Yes.



1 Q. Were you aware of the proposals for DAF to pay very  
2 substantial amounts of money in 2007 in relation to the  
3 AdBlue infrastructure for Euro 4?

4 A. I am aware that DAF supported the infrastructure but  
5 I was not aware of the actual amounts that were involved  
6 on that supported infrastructure.

7 Q. So you did not know about the half million pound  
8 proposal?

9 A. I knew they supported, but not aware of the figures.

10 Q. Understood. You understood that support was significant  
11 though, presumably, even if you did not --

12 A. Half a million pounds is significant.

13 Q. Yes. Are you aware whether or not Royal Mail agreed to  
14 those proposed terms by DAF?

15 A. I do not know if Royal Mail agreed to all of the  
16 proposed terms, but I do believe that DAF supported with  
17 the infrastructure of the equipment. But I could not  
18 say how long the contract term was let for.

19 Q. So it would not surprise you if in fact it was only for  
20 12-month extension rather than --

21 A. Without seeing the contract, I cannot...

22 Q. No. Quite fair, understood.

23 THE CHAIRMAN: Was that in the contract, the infrastructure  
24 support, or was it a separate contract?

25 MR BEARD: I will check -- it will have been an amendment

1 I think to the contract TC02011 and 2012, but I will  
2 check the documents in relation to that. I do not have  
3 those references in my cross-examination notes, sir, so  
4 I will have to come back to that.

5 I have got a little bit more to do. I am conscious  
6 of the time. I wonder if now is the time for ten  
7 minutes.

8 THE CHAIRMAN: Yes. We also have Mr Barnes.

9 MR BEARD: We do have Mr Barnes. I think I will reach  
10 Mr Barnes today. Mr Barnes was listed for today or  
11 tomorrow morning, so depending on where we get to, it  
12 may be we can pick up Mr Barnes tomorrow morning. I do  
13 not think there will be any problem in terms of getting  
14 all four of those witnesses done before lunchtime, even  
15 though we have the whole day.

16 THE CHAIRMAN: All right.

17 MR BEARD: So overall in terms of timing there is no  
18 problem.

19 THE CHAIRMAN: Good. All right. 3.20.

20 (3.11 pm)

21 (A short break)

22 (3.21 pm)

23 MR BEARD: Mr Giles, the two contracts we have just been  
24 looking at expired at the end of 2007, that is TC02011  
25 and TC02012. Do you recall that?

1 A. I recall the contract numbers but the specific dates,  
2 not to memory.

3 Q. In February 2007, do you recall that Royal Mail issued  
4 a tender for LF 55s and CFs? So this was a contract to  
5 replace the heavier trucks contract that you had  
6 previously. Do you recall that?

7 A. Not from memory, no.

8 Q. No, okay. Let us just pull it up. It is {I1/486.1/1}  
9 and this is actually a letter in response, being sent to  
10 Royal Mail, saying:

11 "Thank you for the opportunity to provide  
12 a quotation for the supply of Commercial Vehicles from  
13 15/18/26 tonne [for] ... and 6x2 Articulated vehicles."

14 This is March 2007 but you have not seen this  
15 document. Sorry, it is --

16 THE CHAIRMAN: Who has written this letter?

17 MR BEARD: If we go down to the bottom, please -- I am not  
18 sure this is the right reference, I apologise. Sorry,  
19 I will just see if I can find the correct reference.  
20 I am sorry, I think it should be 486, page 1. It is my  
21 fault again. Thank you.

22 Here we are, this is the document I was looking for  
23 {I1/486/1}, "Invitation To Tender". What we actually  
24 saw there was an exchange in relation to that. That was  
25 why it was a sub-number.

1           You see there it is "Invitation To Tender", closing  
2           date is 19 March 2007, the tender number: VEH06010.

3           I am not sure whether or not that is in your hard copy  
4           bundles, Mr Giles. I just wanted to see whether or not  
5           you had seen this. If you scroll down, so this is the  
6           DAF response to that. Do you remember seeing this?

7           A. I cannot recall it from memory, no.

8           Q. But you were aware of the tender for Euro 4 and Euro 5  
9           tractor trucks in 2007?

10          A. I would have been, yes.

11          Q. You would have been.

12                 If we could just go to {I2/8/1}, please. That does  
13                 not look like the right reference again. Could you give  
14                 me one second? I apologise if my references have gone  
15                 awry. {I2/8.1/1}, so I have gone the wrong way with  
16                 this one. That is it, "Royal Mail Group Procurement,  
17                 Columbus", so here we are, project names have come into  
18                 play. Do you remember this one?

19          A. I remember the name Columbus, yes.

20          Q. If we just go over to the second slide {I2/8.1/2}, you  
21                 will see on the right-hand side "Approach", three  
22                 bullets down:

23                         "The pack was reviewed remotely by Simon Giles and  
24                         Simon Arnott."

25                 So that is referring to the fact that you would have

1 reviewed this material at the time; is that correct?

2 A. Yes.

3 Q. Yes. We will come back to this but this is to do with  
4 the tender that I have referred to for LF 55s and CFs in  
5 2007.

6 If you go on to slide 4 {I2/8.1/4} you will see  
7 a description of the "Current Situation":

8 "Single sourced through DAF."

9 You will see at the top left-hand side corner,  
10 greater than 7.5 tonnes, so dealing with the heavier  
11 trucks.

12 A. [Nods]

13 Q. "[Currently] single sourced through DAF.

14 "[Royal Mail] represent 0.5% of UK market.

15 "Current contract due for renewal Dec 07 -  
16 recommendation of 90% DAF, up to 5% MAN, up to 10%  
17 [Mercedes]."

18 Do you see that?

19 A. Yes.

20 Q. So this is quite a long way through the tender and  
21 negotiation process. I have not taken you back through  
22 all the stages of it.

23 A. Okay.

24 Q. But this is where we pick up a reference to you in this.

25 A. Right.

1 Q. That is where we look.

2 If we can go to bundle {I1/452/1}, please. So this  
3 is a July, it says 2006 but I think we are fairly  
4 confident it should be 2007 in these circumstances  
5 because otherwise it does not fit at all with the  
6 process. Those slides I was just showing you are  
7 September 2007 and although, in our opening exchanges,  
8 we went through the fact that Royal Mail goes through  
9 quite long procurement processes, that would be  
10 excessive even by perhaps Royal Mail standards, that  
11 level of detail, if it was July 2006. So this is  
12 a letter from DAF, Andy Shadwell, to Tony Shaw.

13 THE CHAIRMAN: There is reference in the second paragraph to  
14 2007.

15 MR BEARD: Yes, absolutely. Thank you, sir. I think it was  
16 both context and internal, so thank you.

17 If we go over the page, second page {I1/452/2}, I am  
18 not going to take you through all of the detail there.  
19 Do you remember seeing this letter at all?

20 A. Which -- what number is it in the volume --

21 Q. It is 67 in your hard copy. We thought you may have  
22 done because of the reference to you reviewing the  
23 Columbus slides, and so on.

24 A. Given the timing of the letter, I probably would have  
25 had sight of it, but --

- 1 Q. You do not remember?
- 2 A. Given the time difference between 2007 to now...
- 3 Q. Right. If you look at the bottom of page 2, if we can  
4 just scroll down on the Opus, thank you, you will see  
5 there the stage we are at in relation to this letter.  
6 It is clearly tenders have gone in following all of the  
7 preliminary steps that we explored earlier.
- 8 A. Hmm-hmm.
- 9 Q. You will see there at the bottom, "E4 [so that is  
10 Euro 4] Tender Price", and three rows down "E5 [so that  
11 is Euro 5] Tender Price". Then across the top, you have  
12 got the different truck models. Do you see that?
- 13 A. Yes.
- 14 Q. What you also see is then a revised tender price for E4  
15 and E5. I am not going to take you through all of them,  
16 but all of them are reduced by around £400. So  
17 essentially this is part of that process of Royal Mail  
18 coming back after the tender, engaging in negotiation  
19 and putting pressure in relation to pricing. Do you  
20 recall seeing these reduced tender prices?
- 21 A. Not specifically.
- 22 Q. You can also see the differences between Euro 4 and  
23 Euro 5 being set out in relation to these arrangements,  
24 and although I am not going to take you through the  
25 details of the text above, the tendered price for Euro 5

1 engines was an increase of £877, but what this letter is  
2 saying is that DAF are dropping that to £477 as the  
3 relevant difference, as well as offering £400  
4 reductions. So this is just another illustration of  
5 that involved negotiation and pricing push-back process  
6 that all of your tendering, I think, you accept  
7 involved, correct?

8 A. Correct.

9 Q. I will not go through various of the points that  
10 Mr Shadwell is raising about the benefits of Euro 5 over  
11 Euro 4, we have touched on one or two of them, but one  
12 of them I think was recognised, and you will recall,  
13 fuel efficiency?

14 A. Yes, it would have been evaluated as part of the TCO.

15 Q. Then also savings on road duty through reduced pollution  
16 certificates. Do you recall that as well?

17 A. Yes.

18 Q. So those sorts of benefits in relation to Euro 5 would  
19 mean that DAF was willing to pay proportionately more,  
20 effectively, in relation to Euro 5 for certain benefits  
21 to accrue. That would be fair?

22 MR RIDYARD: Do you mean Royal Mail?

23 MR BEARD: I did mean Royal Mail, sir, I am so sorry. I  
24 did. Royal Mail would be willing to pay more.

25 A. Yes.



1 Q. Yes, thank you.

2 So if we could go to {I/499.2/1}, please. I am  
3 managing to confuse my points and my pages, I am so  
4 sorry. So we are back in the "Tractor sourcing update"  
5 that I took you to previously, the Ninian Wilson  
6 document. If we can just go to slide 4, please  
7 {I1/499.2/4}, just so you have it in mind. This is  
8 7 September 2007.

9 You will see "Background" and "Strategy" top left:

10 "Exclusively sourced from DAF Trucks with prices  
11 unchanged since 2003 ...

12 "Current contract has been extended ...

13 "Marketplace perception that Royal Mail will not  
14 change from DAF."

15 Then there is a discussion about the garage network  
16 and in-house warranty requirements.

17 Then you see the "Strategy" on the right-hand side.  
18 You actually want a:

19 "Non-exclusive arrangement with market competitive  
20 costs - 2-year contract with extension."

21 The third bullet:

22 "A clear signal to the market that Royal Mail will  
23 change vendors."

24 Do you recall those strategy discussions and that  
25 strategy being set?

1 A. Not in detail, but I do know there was a lot of  
2 conversation around that at the time.

3 Q. Right. Then if we just go over the page to page 5  
4 {I1/499.2/5}, we will see there the "Process & Vendor  
5 Ranking". Do you recall seeing this?

6 A. Not from memory, no.

7 Q. Just so we understand that we are understanding the  
8 left-hand column, at the moment we have got left-hand  
9 column saying "Major project milestone", then the date.  
10 Then we have various manufacturers, and there is an  
11 indication of SCR and EGR trials. Then the OJ notice we  
12 have seen. Then there were specific fuel trials that  
13 were referred to.

14 A. Yes.

15 Q. So we are going through the same process, initial vendor  
16 clarifications, warranty terms, and then we have the  
17 drivers score, so that is the Royal Mail drivers again  
18 doing it?

19 A. It is.

20 Q. Yes.

21 Then through the "Secondary clarification  
22 discussions", which are the further back and forth  
23 negotiations before we reach BAFO, and then through to  
24 the sourcing council, next steps and so on. So it is  
25 all following the pattern that we had seen before.

- 1           If we go to slide 8, please {I1/499.2/8}, do you  
2 recall this costs breakdown and the assessment being  
3 undertaken at that time?
- 4     A. It all looks very familiar on the TCO modelling for  
5 financial and value add scores.
- 6     Q. Here we see at the bottom on the "Value add scoring",  
7 I think you explain that it was possibly comparative,  
8 but on this one, DAF has scored highest in financial  
9 score and on the value added score?
- 10    A. Yes.
- 11    Q. Do you recall that?
- 12    A. Not specifically.
- 13    Q. No. So DAF had scored highest on financial score and on  
14 value added score. But if we go over the page  
15 {I1/499.2/9} to tab 9, what we see is (a) advising the  
16 SCR/AdBlue solution, that is the first bullet; secondly,  
17 seeking initial two-year approval from holdings board,  
18 so that is essentially the sourcing council?
- 19    A. Yes, it is.
- 20    Q. Thank you. Then the discussion is whether or not to  
21 have 100% DAF, who scored highest in both financial and  
22 technical, or to have more of a mix of sourcing in line  
23 with the strategy that had previously been articulated.  
24 That is what we are seeing here; is that right?
- 25    A. [No verbal response]

1 Q. If we go over to slide 11, we see that one of the things  
2 that appears to have been done is some kind of specific  
3 case study against Tesco, but you --

4 A. I cannot --

5 Q. You earlier said you did not remember that?

6 A. I cannot recall that.

7 Q. No, understood.

8 Just if we can go back to slide 9 {I1/499.2/9}, what  
9 we see in relation to the recommendations and the table  
10 you have just explained was considering these matters,  
11 is that if you moved away from 100% DAF, perhaps  
12 unsurprisingly since they had scored highest in finance,  
13 the actual cost to Royal Mail increased for the total  
14 package of trucks that you were envisaging having to  
15 order. That is what this is showing, is it not?

16 A. It is showing what a potential cost could be based on  
17 the results of the evaluation exercise. Until we  
18 actually trial that truck within our operation for  
19 a sustained period of time, it is unknown whether that  
20 TCO modelling is varied with the actual usage of that  
21 truck.

22 Q. That is because over time you will get a more accurate  
23 appraisal of the fuel costs presumably and the service  
24 costs, because the initial purchase cost does not  
25 change, you know that at the outset?

1 A. Correct. It is the initial -- it is the fuel costs,  
2 because the fuel trials are done on a route, and how  
3 that truck then operates within the business on multiple  
4 routes with multiple trailer loads.

5 Q. Yes. Can we go back to the Columbus presentation, so  
6 that is {I2/8.1/1}. So this is in 68 if you want the  
7 hard copy. This was the document we were just in  
8 a moment ago.

9 If we go on to page 4 {I2/8.1/4}, this is what  
10 I showed you that indicated where matters were and what  
11 was being identified. If we then go to page 18  
12 {I2/8.1/18}, so category options and "Key facts  
13 identified":

14 "Engine emission and economy standards ... are  
15 becoming increasingly stringent ...

16 "Rebates exist in order to offset the use of  
17 additional AdBlue required ...

18 "The London congestion charging zone is being  
19 initiated in other cities around the UK.

20 "A low emission zone is being introduced in London  
21 and may be implemented in other cities.

22 "DFT have allocated £20m in subsidies for fleets  
23 that integrate environmentally friendly vehicles."

24 What is being said here is that there are actually  
25 some practical financial incentives in moving to Euro 5;

- 1 is that correct?
- 2 A. There are financial incentives to moving towards  
3 environmentally friendly vehicles. I cannot recall from  
4 memory whether the DFT allocated subsidiary covers  
5 Euro 5 tractor units.
- 6 Q. Understood. So you do not know about that, albeit that  
7 this document is about Euro 4 and Euro 5 transition?
- 8 A. It is to cover off all environmental vehicles and all  
9 vehicles. It is not specific to -- I do not believe it  
10 is specific to tractor units greater than -- because it  
11 covers categories covered less than 7.5-tonne and  
12 greater than 7.5-tonne. So it will cover the Royal Mail  
13 van fleet and the heavy goods fleet.
- 14 Q. I can understand that it might well be broader than the  
15 trucks we are dealing with here.
- 16 A. Yes.
- 17 Q. That is completely understood. But the question I am  
18 asking you is about whether or not moving to Euro 5  
19 engines would mean that they could be both more  
20 economical to run and also come with additional  
21 financial benefits in terms of minimising congestion  
22 charges, low emission zone charges and being able to  
23 benefit from other subsidies. That is what appears to  
24 be being indicated here; is that correct?
- 25 A. It does not specifically say greater than 7.5 Euro 5

1 trucks, it says allocated 20 million in subsidies for  
2 fleet. So it is not clear in my memory whether that  
3 20 million is allocated purely on tractor -- on heavy  
4 goods vehicles moving to Euro 5.

5 Q. Understood. But insofar as Euro 5 engines would be more  
6 fuel efficient and would bring with them collateral  
7 benefits in terms of reduced congestion charging or  
8 access to part of that funding at least, those would be  
9 incentives for Royal Mail to move across to Euro 5  
10 trucks, correct?

11 A. Those were the considerations to move across to the  
12 Euro 5 truck.

13 Q. The more that you get benefits of that sort, the greater  
14 your willingness to pay for those trucks, inevitably?

15 A. Depending -- yes, if we have got the allocated capital  
16 to buy that particular truck.

17 Q. It also depends on what else comes with the Euro 5 truck  
18 model, does it not? Because these truck models did not  
19 just change the emission standard arrangements for  
20 a particular engine. They came with a range of other  
21 upgrades which may be beneficial to you or your drivers?

22 A. Yes. They came with many changes. The most notable one  
23 was the use of AdBlue which, again, was the  
24 infrastructure. But, you know, technically we have got  
25 to add that AdBlue through the operational life of

1 operating that truck as well.

2 Q. Of course. But the other changes that come with a new  
3 model of a vehicle, such as the Euro 5 new emissions  
4 standard vehicle, those could be benefits that would  
5 increase the willingness of Royal Mail to pay for  
6 a particular new standard or a new model of truck,  
7 I think you accept?

8 A. Yes.

9 Q. Yes. Could we go to {I2/4.1/1}, please? It is in your  
10 hard copy bundle at tab 69. You are ahead of me.

11 So this is an email from Mr Shadwell to Mr Shaw,  
12 copying in Mr Ashworth, 19 September 2007. What it  
13 indicates, I think, probably is clear from the first  
14 sentence:

15 "Our meeting last Thursday with Phil O'Gorman and  
16 Richard Boyce [names we have already touched on]  
17 concluded in another opportunity for DAF Trucks to  
18 consider our submission for a final clarification."

19 So this is another go-around in those post-tender  
20 negotiations, correct?

21 A. It appears so, yes.

22 Q. Have you seen this email previously?

23 A. No.

24 Q. No, I see.

25 So you are not aware, if we go down to the fourth



1 paragraph, which starts at "A core subject", but it is  
2 actually the last sentence:

3 "Therefore with the sole intent of making any  
4 decision to reduce a percentage tender award a difficult  
5 one we are now proposing to supply our optional Euro 5  
6 emission engines at zero on cost."

7 So we had seen the discounting that DAF had already  
8 offered, but here they are actually saying if you can  
9 make us a sole supplier, we will give Euro 5 engines for  
10 zero increased cost. Do you remember that?

11 A. No, I do not recall it from memory.

12 Q. No. Okay, thank you.

13 Now, in the end you did not go with the sole supply  
14 option, you went with the multiple supply option.  
15 Do you recall that?

16 A. Not from memory. I --

17 Q. I see.

18 A. -- contracts but...

19 Q. That was in fact what happened. But nonetheless in  
20 relation to a number of truck models, in fact the Euro 5  
21 standard was offered at zero increase. Do you remember  
22 that?

23 A. No, not from memory.

24 Q. Understood. Now, I have been focusing on the heavier  
25 trucks, so that was the subsequent contract from

1 TC02012. I just briefly want to go to the slightly  
2 lighter trucks, the 7.5s, so the LF 45s in DAF language,  
3 subsequent to TC02011.

4 So {I2/11}, starting at page 6, I think {I2/11/6}.  
5 72 in your hard copy bundle, if that helps. If we can  
6 go down to the bottom of that page, yes, you can just  
7 about see it at the bottom. That is brilliant,  
8 thank you.

9 Actually, the header for the email that I am just  
10 going to come on to is Andy Shadwell to Simon Arnott,  
11 who we have picked up previously, copied to  
12 Ray Ashworth. It says "Simon", and if we can just go  
13 over the page to {I2/11/7}. I should say the date of  
14 this is the 5th of the 10th 2007, so this is slightly  
15 after the discussion we have just been dealing with.

16 You see at the top:

17 "My apologies for the delay in responding to your  
18 enquiry over terms for a potential extension to our 7.5t  
19 contract."

20 Have you seen these emails and this exchange  
21 previously?

22 A. No.

23 Q. No. So you do not recall anything to do with the  
24 limitations on the increase in Euro 4 chassis prices for  
25 LF 45s around that time, no?

1 A. No.

2 Q. No, and in relation to Euro 5 LF 45s, there was a very  
3 small increase being put forward in relation to the  
4 two-year extension: £275 for a 140-horsepower LF 45.  
5 You do not recall that?

6 A. No.

7 Q. Were you updated at all about these negotiations at the  
8 time?

9 A. I cannot recall back to 2007.

10 Q. So you did not discuss with Mr Arnott his responses to  
11 how he might respond to DAF?

12 A. From 2007 to 2022, I cannot recall whether I did or did  
13 not discuss the responses.

14 Q. So do you recall at all the sort of culmination of this  
15 process where it was indicated that DAF would consider  
16 supplying at zero increase these LF 45 trucks if  
17 Royal Mail provided forecasts of the numbers of trucks  
18 that they would purchase from --

19 A. Not to -- not -- I cannot recall it.

20 Q. No. Could I just go to our skeleton argument. There is  
21 actually a tab in your bundle, 32 in your bundle, and  
22 that is at {S/5/1}, please.

23 I just want to make sure -- this is the annex to our  
24 skeleton argument. I do not know if you have actually  
25 seen it. What it is, is it sets out the various

1 Royal Mail DAF contracts in respect of which these  
2 claims are brought. I think the first couple back in  
3 1996 and 1997 I have not asked you questions about, and  
4 that was before your time at Royal Mail.

5 We have touched on the third one there, VEH397016.

6 I think you have confirmed you were not involved in the  
7 negotiation of that. That is also true of 397026 over  
8 the page, correct?

9 A. Correct.

10 Q. I think that is also true, although we have not gone to  
11 it, at 397038 and the next one, 398010, you do not  
12 recall being involved --

13 A. No.

14 Q. -- in the negotiation of those. That is also true of  
15 VEH300021 and TC01003, correct?

16 A. Correct.

17 Q. Then we are into the ones that we have specifically  
18 checked on in relation to a number of matters, and  
19 I think you have confirmed you were not involved in any  
20 of the negotiation in relation to TC02012 or TC02011,  
21 and we have touched on the documents where you are  
22 referred to.

23 A. Yes.

24 Q. Insofar as we can find. But you were not involved in  
25 any of those negotiations?

1 A. No.

2 Q. No. That, I think, is also true of the last two  
3 contracts, VEH07006C and the most recent one where, in  
4 fact, we were looking at those tender documents at the  
5 start of the day in relation to that contract. You  
6 recall that? You were not involved in the negotiation  
7 of those?

8 A. That was led by Rob Wheeler on the documents.

9 Q. That was led by Rob Wheeler on the documents, exactly,  
10 and you were not involved in those negotiations.  
11 Thank you.

12 Just a couple of final questions on bodies and  
13 trailers, if I may. We have seen pictures of trailers.  
14 We know that, for Royal Mail, they were acquired to  
15 transport parcels and letters and they are attached to  
16 the tractor units. Even if they are not purchased at  
17 the same time, a trailer only serves its purpose when  
18 connected to a truck tractor unit, correct?

19 A. Yes, correct.

20 Q. Now, of course, it may be the case at any particular  
21 point in time you may have trailers or, indeed, trucks  
22 which are not being used in the overall Royal Mail  
23 system. You could have, I suppose, spare trailers  
24 waiting for a truck to transport them; is that correct?  
25 At any moment in any depot?

1 A. The trailer fleet generally has more trailers than what  
2 we do tractor units. So, yes, that is a fair  
3 assumption.

4 Q. Well, you explain in your first witness statement at 4.4  
5 {D/4/6} that your lawyers, BCLP, have calculated the  
6 useful life of a trailer was longer than the useful life  
7 of a truck. Do you want to just go to your statement on  
8 that?

9 A. Yes, I recall.

10 Q. Do you recall that?

11 A. Yes.

12 Q. Do you know how that calculation was carried out?

13 A. I am not sure exactly the details of how the calculation  
14 was carried out for the operational life of a trailer  
15 and a truck.

16 Q. You do not mention in your evidence the absolute numbers  
17 of trucks and trailers bought during the period relevant  
18 to this claim, do you?

19 A. No.

20 Q. Are you aware that between 1997 and 2010 Royal Mail  
21 bought almost exactly the same number of tractor trucks  
22 as trailers?

23 A. I was not aware, no.

24 Q. But you have no reason to dispute that?

25 A. No.

1 MR BEARD: I think in the light of that answer I have no  
2 further questions for you, Mr Giles. Mr Ward may have  
3 some questions for you, but thank you very much.

4 THE CHAIRMAN: Any re-examination?

5 MR WARD: I do, sir, and it will not take very long.

6 Re-examination by MR WARD

7 MR WARD: Mr Giles, we spent two hours this morning talking  
8 about the HCV tender from 2009, if you recall. You  
9 explained that the project manager for that was  
10 Rob Wheeler.

11 A. Correct.

12 Q. Do you remember when Rob Wheeler joined the procurement  
13 team?

14 A. Not his exact date, but I believe it was around ten  
15 years ago, but I am not sure on the exact date of  
16 employment.

17 Q. So it must have been a bit longer than that if he was  
18 involved in the 2009 tender?

19 A. Yes.

20 Q. The tender involved vehicles for procurement for 2010.  
21 Would it be helpful to see that again? If we could get  
22 up again {I2/149/1}, please. Thank you. This was the  
23 "Team Charter". We can see on the top line "Project  
24 purpose":

25 "... new heavy vehicles from 1st January 2010 ..."

1           Now, you have confirmed you were not involved in  
2           this, but are you aware whether any vehicles were  
3           actually purchased under this tender?

4           A. I am not sure how many vehicles were purchased. I would  
5           need to look at the vehicle order volume from that date  
6           onwards.

7           Q. Okay. Can I just say for the tribunal, just for your  
8           note, not for Mr Giles, that in fact it is common ground  
9           that no vehicles in the claim were purchased under that  
10          tender that we spent half of the morning on.

11          THE CHAIRMAN: Under the contract?

12          MR WARD: I am sorry, sir?

13          THE CHAIRMAN: Under the contract that was there?

14          MR WARD: Yes, under the subsequent contract there are in  
15          fact no vehicles in the claim at all, and that can in  
16          fact be found in the leasing schedule which involves  
17          a detailed agreement about exactly which trucks come  
18          under which tenders.

19          MR BEARD: I can confirm that, if that is of assistance.

20          MR WARD: Thank you.

21                 Now, it was also said to you just now that  
22                 a schedule was shown to you and you were asked to  
23                 confirm whether you were involved in any of the tenders.  
24                 You said none on that list. In fact we are checking,  
25                 sir, and we think the list is incomplete, but may I just



1 show you one example that we have been able to find in  
2 the course of the afternoon or in the course of the day?  
3 Could we go to {I6/86/1}, please?

4 THE CHAIRMAN: Are you talking about the schedule to the --

5 MR WARD: The schedule to the skeleton that was shown just  
6 a few minutes ago. Mr Beard went through it.

7 THE CHAIRMAN: Yes.

8 MR WARD: Can we go to {I6/86}, please? This is an  
9 amendment to the contract of 2001.

10 MR BEARD: Sorry, it was not hard for Mr Ward to find this.  
11 I took the witness to it.

12 MR WARD: No, I am not claiming any special credit. I am  
13 simply making a point that we see there that the  
14 purchasing officer is Simon Giles.

15 So, Mr Giles, it is right to say, is it not, that  
16 you were in fact involved in Royal Mail/DAF contracting?

17 A. On the skeleton document, the reference to VEH397016 is  
18 from 28 January 1997 to 31 March 1999 and extended three  
19 times. The document on here is dated 28 January 2001,  
20 so there is some date misalignments as well as  
21 amendments that are not included on the skeleton that  
22 has been presented here.

23 Q. Yes, thank you. The short point I make is this appears  
24 to be a contractual extension with Royal Mail that you  
25 were involved with. Would you agree?

1 A. Yes.

2 Q. Now, you were asked about total cost of ownership being  
3 used for scoring and, again, that was shown to you in  
4 that tender from 2009 for HCVs. Mr Beard at one point  
5 described this as a standard framework. Can I ask you  
6 to go to your first witness statement, please, at  
7 {D/4/9}, paragraph 5.9. In fact, it may be better to  
8 start at 5.8. Could you just go back one page {D/4/8}.  
9 You say:

10 "During the Relevant Period, the specified  
11 evaluation criteria has changed although they were aimed  
12 at assessing the same factors to identify the most  
13 commercially advantageous tender. Between 1997 and at  
14 least 2002, Royal Mail assessed tenders received for  
15 Trucks with a view to identifying the most economically  
16 advantageous tender in terms of some or all of the  
17 following criteria (not in order of priority) ..."

18 The first one is "(a) price of Trucks and Bodies".  
19 Then if we go to 5.9 on the next page {D/4/9}:

20 "Later in the Relevant Period, and at least from  
21 around May 2009, Royal Mail assessed tenders received  
22 for Trucks according to the following criteria."

23 (a) is "total cost of ownership". So it appears  
24 from your evidence that total cost of ownership was not  
25 standard framework for the entirety of the period; is

- 1           that right?
- 2       A. A lot of the data in 5.8 -- so if we look at the price,  
3           the running cost after sales, terms and conditions,  
4           a lot of that -- some of that does make up the total  
5           cost of ownership. Yes, it is -- how the ITTs are  
6           structured in each particular year and what evaluation  
7           criteria is put on those invitation to tenders.
- 8       Q. So it would depend on the detail of the individual --
- 9       A. Absolutely.
- 10      Q. Yes. Can I show you one further document that relates  
11         to price increases? This is {I1/160.1}, which you were  
12         shown. This is the same amendment number 7 we were  
13         discussing a moment ago. Could we go, please, to page 5  
14         {I1/160.1/5} and if we look at the amendment numbers 2  
15         and 3, it says "Brief description amendment", "2.5%  
16         price increase, "price increase (1.5% on chassis cab)".
- 17                 Do you recall these?
- 18      A. If I saw the documentation, but from memory I do not  
19         recall the --
- 20      Q. So you are not able to help what the background to those  
21         numbers was?
- 22      A. Not without seeing the contract amendments for the  
23         description against those.
- 24      Q. Thank you. Can you just give me a second, please?
- 25         I just want to --

1 A. Yes.

2 MR WARD: Thank you very much. Those are all my questions  
3 for Mr Giles, sir.

4 THE CHAIRMAN: Thank you.

5 Questions from THE TRIBUNAL

6 THE CHAIRMAN: I just have a couple of questions for you,  
7 Mr Giles, before we finish.

8 Gross price lists, you do not mention those I think  
9 in your witness statements.

10 A. No, when we go out to tender, we are asked for a price  
11 for that truck, whether it is a chassis price. We do  
12 not tend to ask for a list price when we go out to  
13 tender.

14 THE CHAIRMAN: Do you not see list prices?

15 A. I cannot recall seeing list prices from DAF on any  
16 tender documentation.

17 THE CHAIRMAN: So it does not play any part in the way you  
18 are pricing these contracts?

19 A. We evaluate the bids based on the assessment which would  
20 be the price for the truck that is offered to  
21 Royal Mail.

22 THE CHAIRMAN: So that is the same for all manufacturers --

23 A. Yes. Yes, it is.

24 THE CHAIRMAN: Right. I just wanted to also ask you about  
25 the contracts. You were taken to I think the 2009

1 contract, and it was suggested to you that any price  
2 increase, it was down to Royal Mail whether to say yes  
3 or no to that.

4 A. Hmm-hmm.

5 THE CHAIRMAN: On a price review. But was it also the case  
6 that if Royal Mail wanted a price reduction, that DAF  
7 could say no?

8 A. Yes, in negotiation it works both ways. So there is an  
9 offer and an acceptance to the -- to what is made to  
10 Royal Mail.

11 THE CHAIRMAN: Yes. Was there, in relation to the contract  
12 extensions that we have seen, was there an obligation on  
13 Royal Mail or DAF to agree the contract extension?

14 A. Not to my knowledge, no, we could have parted ways at  
15 any point.

16 THE CHAIRMAN: Yes, right. Okay.

17 A. We only ordered trucks if we had got a valid contract in  
18 place to order against.

19 THE CHAIRMAN: All right.

20 MR RIDYARD: Sorry, Mr Giles, I have a couple as well.

21 A. Okay.

22 MR RIDYARD: One is on this notion of going back to your  
23 supplier or your potential supplier, in this case DAF,  
24 and quoting the prices that you had been offered by  
25 other suppliers. I think in your second statement you

1           said that that is not something that you did and was not  
2           the practice --

3           A. No.

4           MR RIDYARD: But maybe this is a naive question, but allow  
5           me to ask it anyway. Why not? Is that not a good way  
6           of putting a bit of pressure on price? I do not  
7           understand why you would not go back and threaten your  
8           suppliers with other people's prices.

9           A. We just did not disclose other parties' pricing to DAF.  
10          We just do not disclose other bids to other companies,  
11          so it is fair across the piece.

12          MR RIDYARD: Okay, thank you.

13                 My second question is somewhat related to the  
14                 chairman's last question about long-term contracts. One  
15                 thing which we notice is that -- this is partly true for  
16                 DAF and certainly seems to be true for the other  
17                 potential truck suppliers, that they are producing  
18                 trucks outside of the UK and their costs are incurred in  
19                 other currencies.

20          A. Hmm-hmm.

21          MR RIDYARD: You might say this is just not your problem so  
22                 you do not care, but in negotiations did you ever think  
23                 about, or was it an important consideration as to what  
24                 problems your suppliers might face if their costs in  
25                 euro-denominated terms or other terms would raise their

1 costs? Was there any discussion about indemnifying them  
2 against exchange rate risk?

3 A. I was not involved directly in a lot of the  
4 negotiations. I think one of the contracts was only  
5 referencing raw material price increases, but I know  
6 looking at -- reading some of the sourcing strategies,  
7 we do make comment in sourcing strategies around the  
8 euro exchange rate.

9 MR RIDYARD: But it was something that you just left them to  
10 worry about --

11 A. Yes.

12 MR RIDYARD: -- rather than yourselves?

13 A. Yes.

14 MR RIDYARD: Yes, okay. My last question was about the  
15 length that you hang on to the trucks. I think in your  
16 statement you said there was a standard -- more or less  
17 standard length of I think it was nine years, if  
18 I remember rightly. But I think you also comment that  
19 at some point you changed that to hold on to the trucks  
20 for longer. Can you explain why you changed that?

21 A. We did. We went through a period of not buying any  
22 trucks. Historically at the start of the claim period  
23 we used to operate tractor units over a five-year  
24 operational life, and we increased that up to ten years.  
25 I do not recall the exact dates of each operational life

1 change, but we did move it from five to ten, mainly to  
2 reserve capital within the business and not spend it on  
3 buying trucks.

4 MR RIDYARD: Do you think that was because the trucks were  
5 lasting better or because you were just choosing to  
6 extend the life as a way of saving money?

7 A. A way of saving money during the recession and not  
8 incurring that capital expense.

9 MR RIDYARD: Right. That is helpful. Thank you.

10 THE CHAIRMAN: Thank you, Mr Giles. I think that is all the  
11 questions from everybody here, so you are free to go.

12 A. Thank you.

13 MR WARD: Sir, if I may, I would like to just make a brief  
14 observation about the line of questioning that we have  
15 had today. It does not concern Mr Giles, in the sense  
16 that it is really a legal point.

17 In opening, you might recall I showed you the  
18 tribunal's judgment talking about top-down rather than  
19 bottom-up approaches. There has been, if I may say, at  
20 least an insinuation of criticism against my clients for  
21 providing a witness who has got limited ability to speak  
22 to the various bits of fragments of negotiations that  
23 may have taken place over the last 25 years. Would you  
24 allow me just to show you again a passage from the  
25 judgment of the tribunal?



1 MR BEARD: I think this is submissions. I have got other  
2 remarks to make about the witnesses that have been put  
3 forward. I am very happy to engage in this debate but  
4 now is not the moment for these issues.

5 THE CHAIRMAN: Why do you want to deal with this now?

6 MR WARD: Simply just to make a very short point, sir, which  
7 is just that we have approached this in precisely the  
8 way that the tribunal envisaged, which is, to quote,  
9 providing evidence of witness of fact would be of  
10 a general nature explaining how trucks were priced and  
11 relationships, et cetera.

12 We have not adduced evidence that goes through blow  
13 by blow and we simply will not accept there is any fault  
14 in that. That is the point I want to make.

15 THE CHAIRMAN: Fair enough. You can make that submission in  
16 due course.

17 MR WARD: I shall be making it later.

18 THE CHAIRMAN: Also, similarly, it is understandable that  
19 Mr Beard would want to ask specific questions of this  
20 witness if that is the only person that has been put up  
21 by Royal Mail in relation to the tendering process.

22 MR WARD: Indeed. I simply wanted to clarify the basis on  
23 which it was actually done.

24 THE CHAIRMAN: All right.

25 MR WARD: Thank you.

1           Shall we start with Mr Barnes? I hope that is not  
2           causing him too many difficulties.

3       MR BEARD: I hope not. I am not going to be very long with  
4           Mr Barnes, but I am not going to be ten minutes.

5       THE CHAIRMAN: He would probably prefer not to be in purdah  
6           overnight.

7       MR BEARD: So I just wonder, with Mr Barnes there will be  
8           a few questions in open, but then a bunch of the  
9           material has been designated as confidential by  
10          Royal Mail. We are not taking issue with it. We do not  
11          quite see why it is confidential but we are happy to  
12          proceed on that basis.

13       THE CHAIRMAN: But you do want to take him to those  
14          points --

15       MR BEARD: I do, and I just wonder whether actually we would  
16          be better off, given that there are only five or six  
17          questions in open, probably, to start with tomorrow, it  
18          might be better just to start in private session and  
19          then we could release the transcript subsequently if  
20          material at the start of the exchanges is not in fact  
21          closed, rather than having people come in, do a few  
22          questions and then having people go out and we have to  
23          rejig what is going on.

24                So if we started in closed --

25       THE CHAIRMAN: So we will start in closed session --

1 MR BEARD: 10.30 tomorrow.

2 THE CHAIRMAN: -- at the beginning and then we can work out  
3 what can be made public after that.

4 MR BEARD: Yes. I do not think the fourth estate is  
5 necessarily champing at the bit to get hold of the  
6 material that I may be asking Mr Barnes about and  
7 therefore I do not think the broad interests of open  
8 justice are being fundamentally undermined if those five  
9 questions are not heard live by the public tomorrow.

10 THE CHAIRMAN: Right. Will we have any other similar issues  
11 with the other two witnesses for tomorrow?

12 MR BEARD: We may have one or two with Mr Cahill. Why do we  
13 not, overnight, see whether or not we can consolidate  
14 what needs dealing with with Mr Cahill, after Mr Barnes,  
15 so we can just stay in closed.

16 THE CHAIRMAN: Stay in closed and then come out.

17 MR BEARD: Yes, exactly, as it were. Yes, exactly.

18 THE CHAIRMAN: All right, thank you. That is convenient for  
19 you as well, Mr Ward?

20 MR WARD: Yes. Thank you.

21 THE CHAIRMAN: Okay. So we will start with Mr Barnes  
22 tomorrow at 10.30.

23 MR BEARD: I am most grateful.

24 (4.13 pm)

25 (The hearing adjourned until

Tuesday, 10 May 2022 at 10.30 am)

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